

APNIC Executive Council Election Review Panel Report

At its meeting of 15 April 2010, the EC decided to commission an independent report into the conduct of the EC Election on the 5th March.

The EC invited Adiel Akplogan, CEO of AfriNIC, Savenaca Vocea, Global Partnerships, Manager, Regional Relations - Australasia/Pacific Islands, ICANN, and Philip Smith, Consulting Engineering, Cisco Systems, to form a Election Review Panel, with a brief to prepare this independent report. While the Panel members were present at the APNIC Member Meeting, they were not an "interested party" in terms of the conduct and outcome of the EC election in any way, they did not participate in the election, nor did they participate in the counting of the votes.

The terms of reference of this review panel were to:

- 1) prepare a factual report of what happened in the EC election in March 2010, and
- 2) consider the following questions:
 - Were the election procedures followed?
 - Was the integrity of the election impaired in any manner? If so, how?
 - To note recommendations as to how the conduct of the election process could be improved, as appropriate.

In conducting this review, the Review Panel has consulted the transcript and video recording of the member meeting, received written submissions from a number of individuals who were involved with the election, including the candidates, the scrutineers and staff members who were involved with the conduct of the Election.

The Review Panel is aware that following a call for submissions to the Review Panel, subsequent community discussion has included some individuals advocating a broader brief for this Review Panel. The Review Panel notes that it has confined its study to the brief provided by the EC, and this report will address specifically those questions posed by the EC in setting up this Panel.

APNIC Election Process

APNIC has used the same process to operate EC elections for a number of years. The election process and the procedures used to conduct the elections is described in a number of documents and announcements, including:

- the APNIC ByLaws,
- announcements that are sent to APNIC membership during the course of the election process,
- notices posted on the APNIC web site,
- online instructions provided to members who chose to use the online voting process,
- a description of the election procedure provided during the member meeting, supported with directions and descriptions with the presentation material
- instructions provided on the ballot paper.

APNIC voting is by a secret ballot, and the confidentiality of individual votes appears to be an accepted and valued attribute of the voting system. Because the voting framework used by APNIC allocates individual voting entitlements to each APNIC member according to their membership tier, the ballot papers used by APNIC are issued with a watermark that denotes the number of individual votes associated with each ballot paper. The Panel understands that there are a relatively small number of Extra Large and Very Large members, and correspondingly, a small number of ballots with 64 and 32 votes. While ballot papers do not identify the voting member, the panel understands that in certain cases it may be possible to infer the likely ballot for these large vote ballots from this small subset of members. The Panel understands that in order to preserve the secrecy of the ballot, and to ensure that there is no interference with the ballots

during the counting process, the vote counting process is undertaken by a group of individuals who were unaffiliated in any way with any APNIC member, and unaffiliated in any way with any candidate in the election, and the vote count was undertaken by these individuals in a closed room without any observers present.

Summary of Panel Findings

1. The Panel found that established APNIC EC election procedures were followed by all concerned in accordance with their roles, with the exception of:
 - There were interruptions to the counting process, and there were no established procedures to govern such events;
 - An unprecedented ad hoc vote that was undertaken on the floor of the APNIC member meeting, regarding resumption of the counting process;
 - An interested party gained access to at least some part the counting process as a scrutineer, in violation of the stated requirements for scrutineers to be completely independent of any APNIC member and any election candidate.
2. There is no evidence that the integrity of the election result itself was impaired, however the assumed secrecy of the election ballot was potentially compromised. The panel found no evidence that confidential information was actually gained or used by any party.
3. The panel is of the view that the APNIC election procedure that has been used consistently over the past decade is generally appropriate and adequately sound. The panel finds therefore that there is no compelling case to be made for a major overhaul or revision of the APNIC EC election procedure. However, it is also clear from the events of 2010, that the APNIC EC election procedures could be further clarified, and extended to encompass events and exceptions which were not previously foreseen. The Panel's report includes a recommendation for the EC to review of all procedures related to the election process, with a view to formal documentation, and inclusion of specific measures that deal with a wider range of circumstances which may occur in the course of any election.

Detailed Panel Findings

1. Were the election procedures followed?

Nominations

It appears that established procedures for nominations were followed accurately. The timelines of the nomination procedure were adhered to, and all public notices were posted on time. According to copies of correspondence held on file by the APNIC Secretariat, nominees were provided with information of their nomination and information relating to the roles, responsibilities and potential personal liabilities associated with the role of being a member of the Executive Council. Nominees were asked to confirm their nomination as an informed decision.

There were 6 nominees for three vacant EC positions.

There were no complaints received by the Review Panel on the nominations procedure.

Announcements:

[Apnic-announce] Call for nominations to the APNIC Executive Council
<http://mailman.apnic.net/mailling-lists/apnic-announce/archive/2010/01/msg00001.html>

[Apnic-announce] Nominations for APNIC Executive Council close soon
<http://mailman.apnic.net/mailling-lists/apnic-announce/archive/2010/02/msg00002.html>

On-Line Voting

OnLine voting opened on the 19th February 2010, 10 working days prior to the Member Meeting, and closed at 3 March 2010, 09:00 UTC +8, 48 hours prior to the Member Meeting, which is in accordance with the requirements as stated in Part IV, Paragraph 23 the APNIC ByLaws. It appears that the report from online voting was handled with due care and attention to privacy.

Again it appears that the election procedures for online voting were followed accurately.

There were no complaints received by the Review Panel on the On-Line voting procedure.

Proxy Authorities

The lodging of proxy authorities for these elections opened on the 19th February 2010, 10 working days prior to the Member Meeting, and closed at 3 March 2010, 09:00 UTC+8, 48 hours prior to the Member Meeting, which is in accordance with the requirements as stated in Part IV, Paragraph 21 of the APNIC ByLaws.

It is noted that the precise time of closing of the lodging of proxy authorities was not uniformly interpreted by all participants in the election.

However, it is also noted that the APNIC ByLaws state that "The instrument appointing a proxy shall be produced in person or by verifiable electronic means to any member of the

Executive Council or the Director General, or at the principle place of business of the corporation, 48 hours before the time for holding the meeting at which the person named in such instrument proposes to vote."

The actions of the APNIC staff, and the actions of the subsequent review by the Executive Council of the decision not to accept proxies lodged after the closing time, appear to be fully consistent with the provisions of the APNIC ByLaws relating to the lodging of proxy authorities.

The specification of the closing time as "3 March 2010, 09:00 UTC+8" appears to the panel to be entirely consistent with the convention of the specification of a date, a time of day and a timezone identifier (in this case the timezone "UTC+8" specifies a local time zone 8 hours ahead of Coordinated Universal Time, or UTC). The review panel notes that the APNIC secretariat has posted a notice describing date and time representation used in APNIC notices and announcements. The Panel notes that APNIC's practices, including those applied during the 2010 election process, are consistent with international standards for the specification of dates and times (ISO8601 in particular). [<http://www.apnic.net/about-APNIC/organization/apnics-region/date-and-time>].

The Review Panel is aware that there are some complaints over the handling of proxy authorities that were lodged after the announced deadline, and the Review Panel is of the view that the actions of the staff and the EC were procedurally correct and entirely consistent with the provisions of the APNIC ByLaws.

On Site Voting

In terms of the distribution of ballots to individuals who registered to vote, the Review Panel believes that the procedures were followed diligently. Individuals who were eligible to vote by virtue of being nominated as the voting individual for a member, or by virtue of being a nominee in a valid proxy authority, and who had not already voted using the online facility, were provided with the correct number of voting ballots as far as the review panel is aware.

The integrity of the ballot box was ensured by the constant presence of APNIC staff members beside the ballot box at all times, until the ballot box was passed to the scrutineers.

The Election Review Panel is confident that the election procedure was followed in respect to the conduct of the onsite vote itself.

The Panel is not aware of any complaints regarding the conduct of the On Site Vote.

Vote Counting

The APNIC ByLaws states that: "At any meeting of the Members the Executive Council shall be responsible for the counting of votes in such manner as it considers appropriate in the circumstances, and may for this purpose appoint 2 or more persons to serve as tellers." [Part IV, Paragraph 13, APNIC ByLaws]

The process of having the Director-General, who is an ex-officio member of the Executive Council, conducting a call for individuals who are not APNIC members and not candidates in the election to act as tellers for the counting of the votes is consistent with this provision in the ByLaws and consistent with established practice in APNIC. The Panel also regards the instructions given during the meeting as clear and unambiguous in this regard, in terms of both the presentation material used in the meeting

[http://meetings.apnic.net/__data/assets/pdf_file/0010/19000/ec-election-2010.pdf], and the specific spoken instructions provided to meeting attendees.

“The normal procedure here is that we call for independent scrutineers. Volunteer who would like to offer their services to help to count the votes, and this excludes anyone who is actually an APNIC Member or anyone who is voting...”
[<http://meetings.apnic.net/29/program/amm/transcript#wilson-procedure>]

It is noted that there was no process of vetting the individuals who had volunteered to be scrutineers, and confirming that each volunteer had no association with any APNIC member or with any candidate in the election. Nor is there a clear procedure to follow in the case that a candidate or a member wishes to object to the presence of an individual scrutineer. The Panel believes that these omissions can be regarded as a weakness in the existing procedures.

The presence of one individual in the group of scrutineers, Mr Naresh Ajwani, who was a member of the Board of Directors of NIXI (<http://nixi.in/images/BoardDirectors.pdf>), itself an APNIC member who had a candidate in the EC election, was not in regular accordance with election procedures because someone with an interest in the outcome of the election was placed in a position of counting the ballots.

There are no fixed procedures to be followed for the manner of counting of votes, as the current procedures regard this as a matter to be determined by the scrutineers.

The Review Panel was informed that in this case the vote counting was performed using two groups, and each group compared its tally at the end of the count, so that every vote was counted twice. The group also compared the tally to the original number of ballots to ensure that no votes were added or removed from the count. The Panel is of the view that these procedures provided adequate protection against the possibility of any interference with the ballots during the counting process by any single scrutineer.

Due to objections that were raised to the EC and in the course of Member Meeting to the presence of a particular individual as part of the scrutineer group, the vote counting process was interrupted twice. In the view of the Panel, this represented a breach of the established protocol, and of reasonable expectations of the independence and confidentiality of the election process and the counting of ballots. Both of these interruptions were undertaken at the specific behest of members of the Executive Council, and performed under their direction. The vote group reported that they took measures to ensure that the integrity of the ballot collection was protected in the light of the interruptions to the vote counting process. The Panel is once more of the view that these procedures provided adequate protection against the possibility of any interference with the ballots during the counting process by any single scrutineer.

2. Was the integrity of the election impaired in any manner? If so, how?

The Panel finds that the established process of the APNIC EC election was not followed in every aspect, due to the irregularities in the vote counting process. However, the Panel also finds that there is no evidence to suggest that the election outcome was in any way affected by these events.

All members who lodged proxy forms before the announced deadline for acceptance of such forms had their proxy forms processed, and the Panel believes that all members who used the online voting facility within the stipulated times for the lodging of such votes had their votes included in the total vote.

The Panel is of the view that all validly lodged ballots were included in the ballot count, and that no other votes were included into the count.

The Panel is of the view that the secrecy of the ballot was maintained as the ballots provided to the vote counters gave no indication of the identify of the APNIC member who lodged the vote, and no other individual had access to the ballots between being lodged in the ballot box and being counted by the scrutineer group.

There is no grounds for the Panel to come to a view that the integrity of the election and its outcome was impaired in any way in terms of the operation of the process.

However, the presence of a scrutineer in the scrutineer's group who had a direct connection to a candidate in the election was contrary to the intended operation of the election process. While the staff of the Secretariat operate all the processes relating to the election up to the counting of the votes, the Secretariat staff have no assigned role in the vote counting process and were unable to take any direct action, even when this matter was brought to their attention prior to the commencement of the vote counting. It appears that the EC initially took a similar stance of being seen to be at a distance from the vote counting process, even though under the terms of the APNIC ByLaws, the counting of member votes is performed under the auspices of the EC. The guidance the EC provided to the Executive Secretary of the EC in directing him to interview Mr Naresh Ajwani while the vote counting was underway was not well considered with respect to established procedures. Similarly, the second interview conducted by members of the EC with Mr Ajwani was undertaken in the form of an ad hoc measure due to a lack of established procedures that could be applied in such cases.

From the perspective of APNIC being able to conduct an election within the parameters of integrity, trust and preservation of the secrecy of the voting intentions of members, these events have negatively impacted upon the integrity of the election process in terms of its damage to the trust and reputation of APNIC.

3. To provide recommendations as to how the conduct of the EC election process could be improved, as appropriate.

The Panel has deliberately restricted its view of recommendations to matters that lie within its brief, and has not considered those topics subsequently raised in online forums concerning the existing structure of membership tiers, the concepts of terms of office for EC members, regional representation or similar matters outside the terms of reference for this EC Election Review Panel.

The recommendations of this report are specifically addressed to the EC Election process itself, and are deliberately limited in scope to precisely this topic.

The Panel is of the view that the APNIC EC Election procedures have been used consistently over the past decade, and these procedures have generally served their purpose satisfactorily, as evidenced by the lack of past challenge or controversy. Panel members are also aware that during this time, the administrative procedures of the election (in terms of the form of ballot papers, the clarity and detail of instructions and announcements, etc) have evolved to make the process smoother and clearer to all participants. The Panel finds therefore that there is no necessity for a major overhaul or revision of the APNIC election procedure, based on the current review.

However, it is also clear from the events of 2010, that the APNIC election procedures could be further clarified and formalised, and extended to encompass events and exceptions which were not previously foreseen. Therefore the Panel does recommend a review of all procedures related to the election process, with a view to formal documentation, and specific measures which deal with a wider range of circumstances which may occur in the course of any election.

Specifically, the Panel would like to recommend that the EC consider the following refinements to the EC Election process (in no particular order):

- While, formally, the authority for the conduct of the election falls within the conduct of the member meeting, and rests with the Chair of the Member Meeting, the Panel recommends that the EC consider appointing a Chair of the EC Election, who shall be responsible for the conduct of all aspects of the election procedure and shall have the delegated authority from the EC to discharge this responsibility, including the adjudication of disputes. The intent of this recommendation is to provide procedural clarity in term of nominating an individual who is responsible for the conduct of the all processes associated with the EC Election.
- Specify the qualifying criteria for independent scrutineers¹ to be drawn from ICANN staff, staff members of other RIRs, and staff members from ISOC who are present at the APNIC Member Meeting, selected by the Chair of the Election.
- Conduct the vote count using staff members from the APNIC Secretariat to perform the vote count itself, and use the independent scrutineers to oversee the operation of the

¹ In general, a "scrutineer" is a person who observes any process which requires rigorous oversight, either to prevent the occurrence of corruption or genuine mistakes. It is most commonly known as part of voting in an election, where the scrutineer observes the counting of ballot papers, in order to check that election rules are followed." [Wikipedia, <http://en.wikipedia.org/wiki/Scrutineer>]

vote count. The Panel understands that this practice has been adopted by the RIPE NCC, and believes that this allows the vote counting to be conducted in an efficient manner with due respect for integrity of the handling of the ballots using trained staff, while ensuring the integrity of the election in terms of independent scrutineers to oversee the operation of the count.

- Cease using 64 and 32 vote ballots in the EC Election. Part of the sensitivity of the vote counting process is the relatively small number of ballots with 32 and 64 votes, which impacts on the integrity of secrecy of the votes cast by larger members. The Panel recommends using ballots with 1, 2, 4, 8 and 16 votes, but discontinue the use of 32 vote and 64 vote ballots.
- The election procedure, including the procedure that is to be used to count ballots in EC Elections and the manner of dispute resolution, to be comprehensively documented and published as a public document.

It is recommended that the APNIC Executive Council further examine these recommendations in light of the issues identified in this report, their practical feasibility, and the cost and potential efficiency of the measures.

Submitted by the APNIC EC Election Review Panel:

**Adiel Akplogan
Savenaca Vocea
Philip Smith**

August 2010