

Letter from Keith Davidson , chair of the ccNSO DRD WG to Peter Dengate Thrush, chair of the ICANN Board

CC: Rod Beckstrom, CEO & President ICANN

CC: Chris Disspain, Chair of the ccNSO Council

Keith Davidson  
c/- InternetNZ  
P O Box 11-881  
Wellington

Peter Dengate Thrush  
Chairman of the Board  
ICANN  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292-6601  
USA

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Dear Peter,

While progressing the work of the ccNSO Delegations-Redelegations Working Group, it has been noted that at the time of the .by redelegation considerations by the ICANN Board, the Board agreed that discussions would be held in private session, with only the motion being published in the meeting minutes. With regard to the .by redelegation on 3 February 2009, the Board minutes state:

*"It is hereby resolved (2009-02-03-12), that the proposed redelegation of the .BY domain to Open Contact Ltd is approved."*

And from the minutes of the meeting:

*"The information contained in the discussion regarding the redelegation was held in private session."*

In subsequent ICANN Board decisions relating to redelegations, the Board discussions continue to be held largely in private, noting as follows:

- .ng on 23 April 2009 - no discussion or explanation
- .cv on 27 August 2009 - brief minutes
- .co on 9 December 2009 - no discussion or explanation
- .in on 4 February 2010 - minimal discussion notes
- .tz on 4 April 2010 - no discussion or explanation

From the ICANN Bylaws from 2008 I note:

- *Section 2. CORE VALUES - In performing its mission, the following core values should guide the decisions and actions of ICANN:*

*7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.*

*8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.*

*10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.*

- *ARTICLE III: TRANSPARENCY - Section 1. PURPOSE*

*ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.*

- *Section 5. MINUTES AND PRELIMINARY REPORTS*

*1. All minutes of meetings of the Board and Supporting Organizations (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN Secretary for posting on the Website.*

*2. No later than five (5) business days after each meeting (as calculated by local time at the location of ICANN's principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the preliminary report made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.*

*3. No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN's principal office, then the next immediately following business day), the minutes shall be made publicly available on the Website; provided, however, that any minutes relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.*

As minutes of redelegation discussions by the Board were all formerly made public, up to the point of making the .by decision, it would be reasonable to conclude that these decisions were not considered "personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect

the interests of ICANN), or matters that ICANN is prohibited by law or contract from disclosing publicly” – as per Section 5. MINUTES AND PRELIMINARY REPORTS, part 3.

The only other method for censoring minutes as per the same article of the Bylaws is “and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.”

The minutes for the .by redelegations decision meeting, and all subsequent redelegation discussions do not record such a vote being taken or approved, and also these minutes do not describe the reasons for such non-disclosure.

Given the overarching requirement for the ICANN Board to remain accountable to its community, and transparent in its decision making, the ccNSO Delegations Redelegations Working Group has some disquiet with these changes to recorded procedures, and therefore seek your explanation for this significant change to the methodology for the Board dealing with redelegations decisions.

Yours faithfully



**Keith Davidson**  
**Chair – ccNSO Delegations Redelegations Working Group**

c.c. **Rod Beckstrom – President, ICANN**  
c.c. **Chris Disspain – Chair, ccNSO Council**