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Legal Opinion on Regional Internet Registry (RIR) governance with a focus on APNIC

INTRODUCTORY MATTERS:

In connection with Mr Lu seeking to be a Change Agent and a leader for positive changes - transparency and lower costs for the benefit of global internet users - Mr Lu is currently seeking election to the so-called 'Executive Council' of APNIC (Asia Pacific Network Information Centre, the Regional Internet Registry (RIR) for the Asia Pacific region).

It needs to be understood, that the **whole** of that edifice, which is everything 'APNIC' as the public and visible entity (with members, elections, Executive Council, Director-General, Secretariat etc.) is an artificial, carefully crafted with the right optics **construct** (a "Special Committee"), **resting entirely upon Article 9:3 of the Articles of Association of the corporation APNIC Pty Ltd.**

Perusal of APNIC Pty Ltd's own corporate documents and public registry details brought to light that, astonishingly, APNIC Pty Ltd. is a proprietary company, which has been and is 100% owned, operated and controlled by just *one* man, Mr Paul Byron Wilson, for 25 years.

APNIC Pty Ltd. is a self-declared "not-for-profit" company.

APNIC Pty Ltd. was incorporated in 1998 as an Australian Proprietary Company limited by shares

- with 1 (one) ordinary share issued, allotted to and owned by 1 (one) Shareholder, Mr Wilson;
- with 1 (one) appointed Director, Mr Wilson, approved by the sole Shareholder, Mr Wilson;
- with 1 (one) Secretary, Mr Wilson, approved by the sole Shareholder, Mr Wilson.

This has remained the year-on-year renewed position for 25 years.

Hence the RIR for the entire massive Asia-Pacific region has since inception been and continues to be managed by only ONE director (Mr Wilson) sitting on the Board, answerable to only ONE Shareholder (Mr Wilson) with only ONE share allotted and paid up, assisted by ONE Secretary (Mr Wilson).

Further: According to Section 248B of Australia's Corporation Act 2001 (as amended) when a company has only 1 (one) Director, the sole Director may pass resolutions by recording and signing the decisions.

It is also odd, that according to Article 3.2 of APNIC's Memorandum of Association, the authorised share capital of the company is AUD 5,000. However, according to the company extract from the Australian Securities & Investments Commission (ASIC), only 1 (one) AUD 1.00 share has ever been issued and paid up, which begs the question: for what future purpose were (and remain) the other 4,999 shares authorised?

Also: there is a 'Trust' arrangement whereby Mr Wilson's one (1) share is held in trust, as stated - with unintended irony! - in APIC's main section headed "Transparency", subsection "Corporate Governance": "There is one share on issue in APNIC Pty Ltd which is held on trust for the Executive Council as the elected representatives of APNIC's Members".

That interesting arrangement is further addressed in section (f) [page 6] in this report.

Since the above should raise a number of red flags, in the first instance to the other RIRs, ICANN and Australian Federal authorities (let alone internet customers of APNIC in the Asia-Pacific Region), the main question is, whether - since 1998 - a ‘scam’ (which is a non-legal term) may potentially have been, and may continue to be, perpetrated upon the Regional Internet Registry members in the Asia Pacific Region, and upon the other regional Registries (RIRs).

It is relevant to briefly consider the structure and functions of other Regional Internet Registries, as compared with APNIC.

1. ARIN, American Registry for Internet Numbers [<https://www.arin.net>] was established in December 1997 as the American Registry for Internet Numbers (ARIN) and is a non-profit, member-based organization that supports the operation and growth of the Internet.

ARIN services the region comprised of Canada, the United States, and many Caribbean and North Atlantic islands (a full list is at ARIN’s homepage link “Our Region”).

Usefully, ARIN provides an image of the Regional Internet Registry Regions and confirms that: *“Regional Internet Registries (RIRs) are non-profit corporations [i.e. all 5 of them - inserted] that administer and issue Internet Protocol (IP) address space and Autonomous System (AS) numbers within a defined region. RIRs also work together on joint projects”.*

The five RIRs comprise

ARIN: Canada, many Caribbean and North Atlantic islands, and the United States

RIPE NCC : Europe, the Middle East, Central Asia

LACNIC : Latin America, portions of the Caribbean

AFRINIC : Africa, portions of the Indian Ocean

APNIC : Portions of Asia, portions of Oceania

[Image detail not optimal; image address: <https://www.arin.net/about/welcome/region/images/rirmap.svg>]



ARIN’s organisational structure is transparent and straightforward:

[Image detail not optimal; image address: <https://www.arin.net/about/welcome/staff/images/orgchart2023.svg>]



1. The 8 member Board of Trustees consists of 7 Trustees elected by the ARIN membership and the selected President as the eighth member; the Board establishes and maintains authority over ARIN's scope, mission, and strategic and fiscal direction.

The Board of Trustees selects the President and directly determines compensation. The President acts as Chief Executive Officer, who appoints and supervises all ARIN operational staff and serves on the Board of Trustees as the eighth member.

(An Advisory Council is also elected by the ARIN membership, and advises the Board of Trustees on Internet number resource policy and related matters and forwards Recommended Draft Policies to the Board for ratification, in adherence with the Policy Development Process. The President serves as an ex-officio member of the Advisory Council).

2. All Trustees and senior operations staff are listed with relevant biographical details.

3. The Board of Trustees holds all final legal powers, including that *"Any officer [which by definition includes the President] may be removed from office by the affirmative two-thirds vote of the Trustees then in office at any time with or without cause at a regular meeting or special meeting called for that purpose"*

Article VII, Section 8 (a), confer Section 1. BYLAWS OF AMERICAN REGISTRY FOR INTERNET NUMBERS, LTD (Formed under the Virginia Nonstock Corporation Act).

Regarding two other RIRs (RIPE NCC and LACNIC), it suffices to only briefly mention these, since these RIRs appear to broadly function structurally and organisationally according to templates similar to ARIN.

2. RIPE NCC (Network Coordination Centre) states:

"We're a not-for-profit organisation that works to support the RIPE (Réseaux IP Européens) community and the wider Internet community. The RIPE NCC membership consists mainly of Internet service providers, telecommunication organisations and other companies that manage their own network infrastructure. RIPE NCC (Network Coordination Centre) is the regional Internet registry for Europe, the Middle East and parts of Central Asia. Its headquarters are in Amsterdam, Netherlands, with a branch office in Dubai, UAE. A RIR oversees the allocation and registration of Internet number resources in a specific region".

[Ripe NCC was established in April 1992 Netherlands, Amsterdam].

3. LACNIC (Latin America and Caribbean Network Information Centre)

The Latin American and Caribbean Internet Addresses Registry is an international, non-governmental organization established in Uruguay in 2002. It is responsible for assigning and managing Internet number resources (IPv4, IPv6), Autonomous System Numbers, and Reverse Resolution for the region.

LACNIC contributes to regional Internet development through an active cooperation policy. It promotes and defends the interests of the regional community and helps create conditions for the Internet to function as an effective instrument for social inclusion and economic development in Latin American and the Caribbean. It is managed and run by a board of seven Directors elected by LACNIC members. This group of members comprises more than 12,000 network operators who provide services in 33 Latin American and Caribbean territories.

LACNIC is managed by an honorary Board of Directors consisting of seven members [now 9 members]. This Board oversees the organization's political representation and is directly responsible for resource administration.

LACNIC's Board of Directors is representative of the organization's members: Directors are elected directly by member vote. LACNIC's Executive Director participates in the Board of Directors meetings with rights equivalent to those of a director, with the exception of the right to vote.

LACNIC shall be managed and administered by a Board of Directors comprised of nine members elected among the citizens of the countries or territories that are part of the LACNIC service region. The Board of Directors shall include the following positions: president, vice president, secretary, deputy secretary, treasurer, and deputy treasurer. Directors shall each serve a three-year term, except in case of permanent vacancy as described in Article 21. Directors shall be eligible for re-election provided that they meet the eligibility criteria. Each year, they shall be partially renewed in groups of three. LACNIC's Executive Director/CEO shall participate in Board meetings with the same rights as a director, except for the right to vote.

With other RIRs, LACNIC is a member of the Number Resource Organization (NRO), which exists to protect the unallocated number resource pool, to promote and protect the bottom-up policy development process, and to be the focal point for input into the RIR system.

4 AFRINIC's Internet Routing Registry (IRR)

African Network Information Centre (AFRINIC) is one of the five Regional Internet Registries in the world, established to ensure a fair distribution and management of Internet number resources in Africa. Like the other four Regional Internet Registries, AFRINIC is a member of the Number Resources Organization and operates as a non-governmental and not-for-profit member-based organisation.

[In view of AFRINIC's current severe problems, they are not included when referring to "the other" RIRs]

Thus ARIN, RIPE NCC and LACNIC all appear to function in proper legal ways and in accordance with the public information provided by these RIRs.

All those three RIRs appears to

- have a proper, transparent and genuine election process amongst their members, resulting in election of a genuinely executive Board of Trustees or similar type of Board;
- have, therefore, a properly constituted executive Board with real and final powers and authority, including appropriate and normal authority to hire and fire key officers, including the CEO
- have appropriate and genuine budget and financial processes and structures in place.

[It is interesting, that the above is actually well reflected in e.g. the various Wikipedia articles regarding the ARIN, RIPE NCC and LACNIC (*q.v.*).

In glaring contrast, Wikipedia has regarding APNIC this fairly unusual warning on its article:

This article has multiple issues. Please help **improve it** or discuss these issues on the **talk page**.

This article **needs additional citations for verification**. (*June 2018*).

This article **reads like a press release or a news article** and may be **largely based on routine coverage**. (*December 2021*).

APNIC STRUCTURE AND ISSUES.

Compared to the other RIRs, APNIC stands alone with what can only be termed a grotesque structure, comprising (in brief summary) *inter alia* the following:

(a) The Preamble to APNIC's Bylaws states (*emphasis added*):

By resolution of the directors passed on June 24 1998, the Special Committee herein known as "APNIC" is appointed in accordance with Article 9.3 of the Articles of Association of the corporation ("the Articles") and is governed by these by-laws promulgated under Article 9.4 of the Articles, whose objects and purposes are set out hereinafter;

Notwithstanding any provisions contained in these by-laws, the by-laws are subject to the Articles and the powers of the corporation and its directors, other officers and members.

Take note, therefore, that the entity called “APNIC” is “a Special Committee”, governed by “the Bylaws”, (promulgated under Article 9.4 of the Articles) which Bylaws are wholly subject to:

- (1) the Articles of Association of APNIC Pty Ltd, and
- (2) the powers of APNIC Pty Ltd (“the Corporation”) *and* [the powers of] APNIC Pty Ltd’ s **(i)** Directors, **(ii)** other Officers and **(iii)** Members - the latter as defined in **(b)** below.

Hence, **everything** in the entity APNIC’s Bylaws can unilaterally and without any notice, be changed by the stroke of a pen, by an APNIC Pty Ltd. Director’s resolution (i.e. a resolution issued by Mr Wilson).

In effect: the public edifice called ‘APNIC’ is nothing more than a department of APNIC Pty Ltd.

(b) Then take note of Article 1:3 in the Articles of Association, which defines a “Member”:

1.3 member: A person who holds shares in the Company.

Consequently: every time the word “member(s)” (in singular or plural - Art. 1:15) occurs in the Articles, simply insert the name “Paul Byron Wilson”, who has always been and still is the **only** Member.

Like most corporations, all ultimate legal powers are vested in the shareholding members.

In APNIC Pty Ltd that is simply Mr. Wilson as the **sole** person holding shares in the company.

Likewise Mr Wilson can e.g. according to Article 6, increase the Authorised share capital and transfer surplus funds etc.

(c) In the normal fashion, many powers and tasks are delegated to the directors in a company.

The **only** ever and still listed Director in APNIC Pty Ltd is Paul Byron Wilson.

Consequently: every time the word “director(s)” occurs in the Articles, simply insert the name “Paul Byron Wilson” as the **sole** Director.

Peruse in particular Article 8: *Directors*, Article 9: *Powers of Directors*, and Article 10: *Proceedings of Directors*; every single function, power and issuance of resolution(s) within the authority of director(s), is **solely** carried out by Mr Wilson.

That includes e.g the powers under Article 3, regarding the 4,999 authorised shares:

3.1 Subject to the provisions of these Articles and any resolution of members [i.e. Mr Wilson] the unissued shares of the Company shall be at the disposal of the directors [i.e. Mr Wilson] who may without prejudice to any rights previously conferred on the holders of any existing shares or class or series of shares, offer, allot, grant options over or otherwise dispose of the shares to such persons at such times and upon such terms and conditions as the Company may by resolution of directors [i.e. Mr Wilson] determine (*emphasis added*).

(d) Take particular note of the wide-sweeping powers of Directors (i.e. Mr Wilson) in Article 9, including the establishing of Special Committee(s) in Article 9:3, upon which Article the whole edifice of the public visible entity APNIC has been built, viz:

9.3 The directors [i.e. Mr Wilson] may, by a resolution of directors [i.e. Mr Wilson], appoint one or more Special Committees of the Company, and may delegate to any Special Committee any of the powers, authority and functions of the directors [i.e. Mr Wilson] including the power and authority to affix the Seal, except that no Special Committee shall have the power or authority to fix the emoluments of directors [i.e. Mr Wilson].

[And Article 9:4 then promulgates the Special Committee].

(e) APNIC is a “non-profit organisation”. That is legally a true statement of APNIC’s *current* position, since the Special Committee which is APNIC has Bylaws stating so, because APNIC’s founding resolution issued by the directors (i.e. Mr Wilson) requires it.

ALL the RIRs promote prominently that the RIRs are all “non-profit organisations” for the obvious reasons of generating trust and to demonstrate that the RIRs are motivated to serve in accordance with their stated ethics policies and not, as it were, by ‘filthy lucre’.

Hence ARIN is specifically formed as a nonstock corporation pursuant to the Virginia Nonstock Corporation Act, certifying inter alia that “*The Corporation shall have no authority to issue capital stock*”.

ARIN also certifies that “*The Corporation shall be operated exclusively for educational, charitable, and scientific purposes within the meaning of § 501(c)(6) of the [US] Internal Revenue Code of 1986 [as amended]*”.

That is precisely the type of structure, which most people surely would associate with the notion of a “non-profit organisation”.

It is unlikely that the general public, any customers, the other RIRs and various international entities and fora have any notion, that APNIC Pty Ltd is a totally different kind of “non-profit” viz. simply a private stock company, whose Articles of Association *currently* state that the company is “non-profit”; likewise, according to the Memorandum of Association 2:1, objects of APNIC Pty Ltd include:

- a. to be a non-profit corporation engaging in or performing all or any act, activity or function which are not prohibited by the Law or by any other law for the time being in force in Australia;
- b. to borrow or raise money by the issue of debenture stock(perpetual or terminable) bonds, mortgages or any other securities founded or based upon all or any of the assets or property of the Company or without any such security and upon such terms as to priority or otherwise as the Company [i.e. Mr Wilson] shall think fit.

It is unlikely that it is grasped by a normal reader, that all of this means, that with the metaphorical ‘stroke of a pen’ (i.e. Members’ and/or Directors’ resolutions made by Mr Wilson), APNIC Pty Ltd can in one moment e.g.

- change the Bylaws of APNIC, dispose of and/or transfer all APNIC assets at will, change the earnings model and also discontinue/dissolve APNIC;
- change APNIC Pty Ltd to be a “with-profit” company, issue and sell shares at will, transfer moneys at will and freely relocate APNIC Pty Ltd to any other jurisdiction in the world - to the benefit of the Shareholders, of course (i.e. Mr Wilson, the **sole** shareholder);
- change the company’s Articles, structure, financial models, dispose of the company etc. etc.

(f) Finally, there is a **Trust** holding Mr. Wilson’s AUD 1.00 share, according to a 1998 Deed.

For 25 years, there was **no** information about or reference to ‘the Trust’, according to the ‘Wayback Machine’.

During the first week of February 2023 a new section called ‘Structure’ was added to the APNIC website under the ‘Transparency’ and ‘Corporate Governance’ information which stated:

“*There is one share on issue in APNIC Pty Ltd which is held on trust for the Executive Council as the elected representatives of APNIC’s Members*” (emphasis added).

A some stage - during the 2nd or 3rd week of February 2023 - there was then established the final links to two documents:

1. **Declaration of Trust dated 24th June, 1998** made by the original Trustee, *David Randolph Conrad*, whereby Conrad “*acquired the only issued share (“Trust Property”) [in] APNIC Pty Ltd*” [Recital A].

Recital B states (excerpted): “*It is the intention of the Trustee to hold the Trust Property on trust for the persons who from time to time constitute the members of the Executive Council as defined in the by-laws of the Special Committee of APNIC Pty Ltd dated [left blank]... (“the Beneficiaries”)*” (emphasis added).

In essence, the Beneficiaries (i.e. the Executive Council members) can do anything with the Trust Property (i.e. **the AUD 1 Share**) with 3/5th majority decisions.

Interesting rights of the Executive Council members - as Beneficiaries under the Declaration - include:

- **that** the Executive Council can (in writing) *direct* the Trustee to make transfers and payments in relation to and deal with the Share and Rights of the Share, including that the Trustee *must* attend all Shareholders meeting and *vote, as directed* by the Executive Council (Article 4 of the Declaration);

- **that** if the Trustee e.g. wishes to retire, or Executive Council wishes to replace the Trustee, the Executive Council may
 - (a) appoint one or more **new** Trustees, or
 - (b) require the **legal title** * to be transferred to the Council (Article 9).

* [Note that the legal title to the Share remains with the Trustee.
The Executive Council are Beneficiaries, not legal owners] .

2. **A Retirement and Appointment of Trustee Deed dated 24th August, 1998**, according to which,
- (a) the original Trustee (Conrad) under the ‘Declaration of Trust dated 24th June’, 1998, retired as Trustee, and
 - (b) *Paul Byron Wilson* was appointed as the New Trustee (all as unanimously confirmed by the then 5 *first* Executive Council members - all appointed by Mr Wilson).

[Wherefore - for ease of reading - whenever **the Trustee** is mentioned in the Declaration of Trust (or elsewhere), just substitute with the name *Paul Byron Wilson*].

So, what does all the above mean?

It all sounds good and proper. The elected Executive Council of APNIC is a true *executive* Council, and holds all the powers; it looks nearly like ARIN and ARIN’s Board of Trustees!

The AUD 1 Share, which is so crucial since there is only one Share, is properly held in trust for the Council as Beneficiaries, etc. and Mr Wilson, the pliant Trustee, must do everything the Council directs! (and this is precisely the normal intention of a trust arrangement; the shareholders/legal owners assign all their beneficial rights to the trust).

All is good, surely?

EXCEPT, alas, it is all illusory (the phrase “*smoke and mirrors*” springs to mind).

Because: all powers of the Executive Council and everything the Council can do and all the Council’s Bylaws derive *in their entirety* from the Director’s resolution issued under Article 9:3 of the Articles of Association of the corporation APNIC Pty Ltd.

In essence, Mr Wilson can as sole Director *via* Director’s resolutions direct all matters of the so-called ‘Executive’ Council and everything pertaining to the Council (including membership, powers, existence, functions and what to say and do, etc.)

The ‘Executive’ Council is nothing but a toothless tool, an edifice constructed for optical purposes, i.e. - as said before - a mere department of the APNIC Pty Ltd. corporation.

And, for good measure: because of his many legal powers as Trustee, sole Shareholder and sole Director of APNIC Pty Ltd and Director -General of 'APNIC', Mr Wilson has at his disposal all the legal tools to and can (with a bit of nifty legal footwork outside the scope of this report) of course reverse the trust arrangement, or dissolve it, or change it, as and when required.

The easiest way is simply with assistance of pliant Council members, as is plain from the Declaration of Trust, but it is also perfectly feasible without this.

[Point of order: Of course, Australian lawyers may or may not agree, partly or wholly, with this report]

Conclusion.

The whole APNIC construct is self-evidently neither right nor proper, although technically likely legal. Sadly, legality and propriety are not synonymous terms.

Cleverly designed and implemented to mask and ensure that only one person has total control of the RIR for the whole of the massive Asia-Pacific Region, ought to be of major concern to Australian federal and Queensland state authorities, as well as to any international bodies which exercise some measure of relevant regulatory powers or influence.

But first and foremost, it ought to be a real cause for concern, even alarm, to the other RIRs (and institutions closely co-operating with the RIRs), that they will all be severely tainted and affected, and quite possibly face rapid and increasing back-lash and criticism, if the other RIRs stay silent, do nothing and do not urgently address the outrageous reality, that one of the RIRs is a wholly deceptive construct, both optically and functionally.

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