

Reconsideration Request

Dr Eberhard W Lisse Michele Neylon

1. Requestor Information

Name:	Eberhard W Lisse	Michele Neylon,
Address	Namibian Network Information Center (Pty) Ltd Contact Information Redacted	Blacknight Internet Solutions, Inc. Contact Information Redacted
Email:	Contact Information Redacted	Contact Information Redacted
Phone Number	(optional)	(optional)

2. Request for Reconsideration of:

Board action/inaction

Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

The *Acknowledgement and In-Person Event Travel Waiver* ("Waiver") in the Registration web site for the ICANN 74 Meeting in the Hague as shown on the registration site <https://events.icann.org/icann74/dnuregistration/Site/Registrar#> is unduly wide and harsh.

4. Date of action/inaction:

The date of publication of the *Waiver* is not shown and the Board Resolutions shown on <https://www.icann.org/resources/pages/resolutions-2014-03-24-en> up to 2021-10-29 do not show a resolution in this regard.

5. On what date did you become aware of the action or that action would not be taken?

On or around 2022-04-01.

6. Describe how you believe you are materially and adversely affected by the action or inaction:

The *Waiver* constitutes a blanket exclusion of any liability whatsoever including actual fault and imposes enforcement burden, if any, on the participants.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

See item 6.

8. Detail of Board or Staff Action/Inaction – Required Information

<https://events.icann.org/icann74/dnuregistration/Site/Register#> states (inter alia):

[...]

Ability to Travel

I have reviewed travel advisories and requirements for my travel destination and transit location(s), as well as my local government's travelers advisories, and health section of the U.S. Centers for Disease Control and Prevention's¹ website, and am informed of health and safety risks present in those locations.

[...]

Applicable Laws, Regulations, and Policies Regarding Conduct

[...]

I understand that I may be required to leave the Event at the sole discretion of ICANN's employees², agents and representatives, I may be referred to the appropriate ICANN officials and ICANN Community leadership for further disciplinary action, and I may be banned from future program participation.

¹Emphasis supplied by the writers.

²Emphasis supplied by the writers.

[...]

Release and Indemnification

I hereby knowingly assume all risks, and covenant not to sue any employees, board members, agents, executives, contractors or volunteers of ICANN or its affiliate for any expense, loss, damage, personal injury, including loss of life, illness, including but not limited to COVID-19, disability, property damage, or property theft or actions of any kind that I may hereafter suffer or sustain before, during, or after the Event, unless said expense, loss, damage, personal injury, including loss of life, illness, disability, property damage or property theft or actions of any kind is caused by the sole, gross negligence of ICANN or its affiliate. This Liability Waiver and Release is specifically binding upon my heirs and assigns and is knowingly given.

I agree to indemnify and hold ICANN and its affiliate harmless from and against any claims, suits, causes of action, loss, liability, damage or costs, including court cost and attorney's fees, and fees to enforce this Agreement, that ICANN may incur arising from my involvement in the Event.

[...]

9. What are you asking ICANN to do now?

The whole *Waiver* should be rewritten.

It is quite laudable that ICANN should, seeks to avoid being held liable for participants' or even staff's exposure to Covid-19, but as written it is doubtful whether it even achieves that.

It should be possible to put something to the extent of

ICANN will do its best to provide a safe environment during the ICANN 74 meeting. This may include measures over and above requirements imposed by local government at the time of the meeting, such as wearing of masks, social distancing, disinfection, vaccination requirements and/or other reasonable measures. Participants are responsible themselves for making appropriate arrangements, in particular health and travel

insurance covering Covid and consequential risks such as delays, quarantine, and hospitalization. ICANN will assume no liability in this regards, nor can participants rely on any assistance by ICANN in this regards. Participants not willing or able to accept this, may not attend in person but only virtually. The Community Anti-Harassment Policy, Terms of Participation and Complaint Procedure, and the ICANN Expected Standards of Behavior apply as usual.

into binding form, even using plain language. After 2 years of the Covid epidemic none of this is news to anyone.

10. Please state specifically the grounds under which you have the standing and the right to assert this Reconsideration Request, and the grounds or justifications that support your request.

- Eberhard W Lisse (“EWL”) is the Managing Director (“MD”) of Namibian Network Information Center (Pty) Ltd (“NA-NIC”)
 - NA-NiC is the ccTLD Manager for .NA and a member of the ccNSO
 - EWL is and has been Member, Vice-Chair and Chair of a number of the ccNSO and Cross Cross Constituency working groups.
- Michele Neylon (MN) is the MD of Blacknight Internet Solutions, Inc. (“Blacknight”)
 - Blacknight is an ICANN accredited Registrar and a member of the RrSG.
 - MN has been a member of multiple working working groups and a member of the GNSO Council.

As such the undersigned are part of ICANN’s multistakeholder model, have been for a significant number of years, and thus believe to have standing.

- Blacknight attends ICANN meetings as they are a contracted party and subject to ICANN policies that are discussed at the meetings. While MN might be the most visible and frequent attendee other Blacknight employees attend ICANN events, especially when they are in Europe.

- NA-NiC attends ICANN meetings to participate in the multistakeholder model. While EWL might be the most visible and frequent attendee other NA-NiC staff are members of several ccNSO and cross constituency working groups, and attend meetings especially when geographically feasible.
- The *Waiver* is not only unduly broad and even burdens the participant(s) with enforcement costs, if any. It is even doubtful whether it is enforceable under local jurisdiction.
- Expecting employers (not only Blacknight and/or NA-NiC) to force their staff to waive their rights in execution of their work related duties is unreasonable.
 - Blacknight has sought legal advice on the *Waiver* which MN already shared with the Chairman of ICANN's Board and ICANN's CEO. The advice received was that they could not agree to the *Waiver*.
- The writers hereof are unaware of any ICANN Policy that makes the current or future participation in ICANN's multistakeholder model subject to *the sole discretion of ICANN's employees, agents and representatives*.
- A **mandatory** requirement for foreign nationals to access a US web site (CDC) as a condition for attendance at an event in a third country seems unreasonable in the opinion of EWL, who has professional expertise and extensive experience in the management of infectious disease (in pregnancy), due to his profession as an Obstetrician & Gynecologist.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes

No

11a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors?

All in-person participants are affected by the *Waiver*.

12. Are you bringing this Reconsideration Request on an urgent basis pursuant to Article 4, Section 4.2(s) of the Bylaws?

Yes

No

12a. If yes, please explain why the matter is urgent for reconsideration.

Travel Arrangements must be made, and the closer it gets to the deadline the more difficult and expensive they become.

13. Do you have any documents you want to provide to ICANN?

Recent ([IETF113](#)) and upcoming ([ARIN49](#)) meetings have used different and more reasonable language in their waivers, extracts of which we enclose as PDFs for ease of reference.

By submitting my personal data, I agree that my personal data will be processed in accordance with the [ICANN Privacy Policy](#), and agree to abide by the website [Terms of Service](#).



Signature

2022-04-11

Date

Eberhard W Lisse

Print Name

By submitting my personal data, I agree that my personal data will be processed in accordance with the [ICANN Privacy Policy](#), and agree to abide by the website [Terms of Service](#).



Signature

2022-04-11

Date

Michele Neylon

Print Name

IETF 113 Vienna Frequently Asked Questions

<https://www.ietf.org/how/meetings/113/faq>*

1 Registration

[...]

1.1 Is vaccination against COVID required for onsite participation?

Yes. The IETF LLC and IESG are in agreement that vaccination against COVID is an appropriate and reasonable requirement for onsite participation. You will be asked to confirm your vaccination status at registration, without being asked to supply any proof, with the following declaration:

✓ *I confirm that I am fully vaccinated with a vaccine from the WHO Emergency Use List.*

1.2 What else do I have to agree to when I register for onsite participation?

In addition to confirming that you are fully vaccinated (see above) you must also agree to the following statement:

✓ *I will take necessary precautions while attending IETF 113, including complying with all COVID-related requirements that apply to the event venue or that are otherwise communicated to me by the IETF. While taking such precautions may reduce risk, any in person participation includes possible exposure to, and illness from, infectious diseases. By choosing to attend IETF 113 in person, I knowingly and freely assume all such risks related to illness and infectious diseases, such as COVID, even if arising from the negligence or fault of the IETF LLC, or its agents or partners. Further, I waive and release IETF LLC, and its contractors, agents and partners from and against claims arising from injury, loss, sickness or death from contraction or spread of COVID or other communicable disease due to travel to or attendance at an event hosted by the IETF.*

[...]

*Last Accessed 2022-04-07

Attendee Commitment to Safety Agreement and Waiver/Release for COVID-19 and other Communicable Diseases

<https://arin.swoogo.com/arin49/1713781>*

The American Registry for Internet Numbers, Ltd. ("ARIN") values the safety of all of those on-site at ARIN 49 (the "ARIN 49 Event") in Nashville, and we will be taking preventative measures to reduce the spread of COVID-19 along with other communicable diseases. To assist this effort, we ask that participants commit to following safety and health protocols. Please recognize that even with these safeguards there remains a risk of exposure to and infection from infectious diseases, such as COVID-19, that you assume by attending the ARIN 49 Event. Additionally, the COVID-19 pandemic is a dynamic situation and this "Attendee Commitment to Safety Agreement and Waiver/Release for COVID-19 and Other Communicable Diseases" is subject to evolving local, state, and federal guidance.

To be an on-site ARIN 49 Event participant, you, the undersigned, acknowledge and agree to the following:

- Comply with all health and safety guidelines related to the ARIN 49 Event and take precautions recommended by the CDC and local and federal agencies, including: minimizing face touching, washing or sanitizing your hands frequently, avoiding risky environments, and self-monitoring for signs and symptoms of illness.*
- Refrain from attending any ARIN 49 Event functions if you are ill, you are waiting for COVID-19 test results, you had close contact to a person who has tested positive for or who has symptoms/signs of COVID-19, you tested positive for COVID-19, or you experience any signs or symptoms of COVID-19 (including but not limited to fever or chills, cough, shortness of breath, fatigue, body aches, headache, new loss of taste or smell, sore throat, runny nose, nausea, vomiting, or diarrhea) within 10 days of the ARIN 49 Event.*
- Accept that your failure to comply with any of the safety guidelines herein, provided at the ARIN 49 Event, or provided by ARIN staff or instructors for the ARIN 49 Event, may result in ARIN excluding you from attending or participating in the ARIN 49 Event.*
- Accept and assume the risk that it is not possible for ARIN to completely prevent on-site participants from becoming exposed to, contracting, or spreading infectious diseases, such as COVID-19, at the ARIN 49 Event and/or on premises where ARIN 49 Event-related*

**Last Accessed 2022-04-07*

functions are held. By attending the ARIN 49 Event and entering onto premises where ARIN 49 Event-related functions are held, you may expose yourself to and/or increase your risk of contracting or spreading COVID-19 and other communicable diseases; and such diseases may result in personal injury, illness, disability, and/or death to attendee.

- Hold harmless, release, and waive any claim against or right to sue ARIN, its officers, officials, employees, and/or other representatives for their actions, omissions, negligence, or fault in connection with exposure, infection, and/or spread of COVID-19 and other communicable diseases, related to attending ARIN 49, to the fullest extent permitted by law.*

I have carefully read and fully understand this agreement and freely and knowingly assume the risk and waive my rights concerning ARIN'S liability as described above.

Your acknowledgment is required. I acknowledge these terms and conditions.