# Initial Submissions in Respect of the *Proposed ICT Policy Review Framing Paper, 2013* – 24th April 2013

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As invited in Notice 429 of 2013 appearing in *Government Gazette* 36408 of the 24th April 2013.

**Principal Submissions: The ICT Policy Review Panel needs to accept that the core future of ICT lies in the Internet and an adoption of the principles and ideology – the culture of freedom and experimentation – of the Internet is a necessary condition. South African ICT policy will only be successful if it is built on continuing the greatest human experiment – the Internet.**

**Contradiction arise between the scope presented in the Minister's invitation and the contents of *Outline of the ICT Policy Review Process, 2013* (Notice 277 appearing in *Government Gazette* 36359 of the 10th April 2013).**

Submission Set as at 15th June 2013

# Opening Remarks

*The greatest obstacle to access and affordability of communications services in South Africa is an inept Minister and incapacitated regulator. Duplicating policy review processes and holding conflicting talk shops where each industry participant has an opportunity to lobby is simply idiotic and needs to be put to an end.*

*Before rewriting the "rules of the game" we need to identify the actual problems in the ICT Landscape and the primary one is the Government deems itself fit to continuously and malevolently interfere in a manner which promotes regulatory capture and the undermining of the internet.*

It is most unlikely that officials at ICASA or the Department of Communications acquaint themselves with the RFCs which essentially make up the policy for the Internet. There is a particular need for the Panel to recognize a fundamental truth of the Internet – which is that no one entity or enterprise is responsible for its being; instead the Internet is the a model of cooperation for mutual benefit driven by volunteers and a spirit of freedom. To achieve progress in ICT in South Africa we need to see the different licence holders together with civil society and academia building networks and relationships. The Internet was achieved not because of imposed consensus or a monolithic approach but instead:

*Out of the chaos of new ideas for communication, the experiments, the tentative designs, and crucible of testing, there emerged a cornucopia of networks. Beginning with the ARPANET, an endless stream of networks evolved, and ultimately were interlinked to become the Internet … all the information that erupted with volcanic force from the intensity of the debates and discussions and endless invention that has continued unabated for 30 years.*

Quoted from RFC 2468 *I Remember IANA*[1]

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[1] http://tools.ietf.org/html/rfc2468

1. As a disclaimer of a potential conflict of interest: I accepted a nomination (by MyBroadband) to serve on the panel, notwithstanding my reservations about the Minister's duplicating processes last year, but was not selected. I do not believe that this changes the content of my submissions – which I would make regardless.

2. A conflict arises, between the *Outline of the ICT Policy Review Process, 2013* (Notice 277 appearing in *Government Gazette* 36359 of the 10th April 2013) and the *Proposed ICT Policy Review Framing Paper, 2013* upon which these submissions comment with respect to the scope and nature of the Framing Paper and the number of stages which the Panel will undertake – 3 or 5. This conflict is a material impairment to the credibility of the process.

3. The credibility problem is heightened by the fact that the Minister originally announced a 22 member panel in contravention of the Terms of Reference and there is now 20 members without any explanation of the reduction. The credibility problem continues when consideration is given to the National Broadband Policy (Notice 350 of 2013 appearing in Government Gazette 36332 of the 3[rd]April 2013) document from the Department of Communications[2].

4. Despite proclaiming that "Your Views Matter To Us" [p26] and announcing a Twitter Hashtag and Facebook identity it is clear that the degree of public participation has been minimal and there is frankly no motivation for the public to participate in light of the numerous parallel processes and the absolute lack of credibility of the Minister and Department of Communications. The Facebook identity does not appear on a search of Facebook and it appears that there is a general lack of activity on Twitter. Media coverage of the work is non-existent.

5. Moreover the R2K campaign has recently taken to making demands concerning access to communications – no mention of the Panel has appeared in their campaign and no doubt if there was a proper engagement process the policy review the nature of their campaign would be different. I submit that regardless of what inputs are received the Panel is duty bound to specifically consult and liaise with the R2K campaign.

## SUBMISSION: THE CONSTITUTION FORMS THE BASIS OF ALL POLICY BEING STATED CAPTURES ALL OF THE "PRINCIPLES"

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[2] Submissions on the Broadband Policy are annexed to this submission.

6. The document consists of a shopping list of 13 "principles" which are actually little more than slogans. Each slogan is open to multiple interpretations and abuse.

7. I submit that a simple statement that any regulation of communications and all policy must be firmly rooted in the Constitution and the individual and collective rights contained therein renders the slogan list moot.

## SUBMISSION: PRIMARY PRINCIPLE LACKING FROM FRAMING DOCUMENT IS "SOUTH AFRICAN'S HAVE THE RIGHT TO PARTICIPATION IN THE INTERNET"

8. The Invitation explicitly states:

   We seek for example your views and inputs on:

   The relevance of the existing objectives set out in related policy and legislative frameworks.

   What, if any, new principles or considerations need to be incorporated given the changing environment?

   What important policy and regulatory issues do these principles raise that need to be considered by the Policy Review Panel

9. It is clear that the policy document conflates different communications media and whilst there has been convergence between telecommunications and broadcasting in a technological sense a particular distinction continues (and will continue to) exist between content which is "broadcast" and readily consumed (switching on the radio or television) and content which is accessible on demand. The core objective of the framework appears to bootstrap consideration about the "broadcast" content to be grounds to interfere in content on demand. While a case for regulating pornography on television exists no case exists to attempt to regulate the Internet.

10. The document lacks any policy principle which prohibits the government from interfering at its whim and appears to give grounds (couched in loose principles) for the government to dictate on numerous premises – protecting children, cultural rights, universal access – in the process each of these premises will become a basis for censorship and the driving of a dangerous government agenda. This failure is not only glaringly obvious but its absence testifies to the true intent of the policy reform agenda of the Minister.

11. Until the South African government commits itself to Internet Freedom and the related adherence to the loose regulatory and consensus amongst technical experts South African's will continue to be short changed in ICT.

12. Every single member of the Panel has an ethical responsibility to acquaint themselves with Hayek and the history of the Internet. If they fail to do this they will produce a set of principles which lead us to information serfdom.

13. The spirit of the Internet has always been freedom and experimentation. The government of the United States of America had the foresight and courage to entrust resources with academic institutions to provide humanity with the fruit of humanity's greatest experiment[3]. The policy process appears destined to kill the very lifeblood of the Internet.

14. I submit that if members Panel fails to explicitly state that the Minister must not interfere in the operations of an industry participant they will be complicit in eroding Internet freedom in the Republic.

15. I further submit that if the Panel is driven to adopt principles and practices to suit current industry participants they will be guilty of perpetuating the current state of regulatory capture.

16. It is at this early stage which the Panel must decide whether it wishes to work towards establishing a future where all South Africans are participants in the Internet or whether that right will be denied to millions of South Africans who must settle for an inferior government and cartel participant tailored communications system.

17. I submit that the core principles can be stated simply as:

South African's have a right to be active participants in the Internet in accordance with the Constitution of the Republic of South Africa.

South African's have a right to receive broadcast electronic media content which is in accordance with the Constitution and to participate in the creation and selection of the content in an equitable manner.

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[3] Vint Cerf (a father of the Internet) has poignantly remarked that the IP4 address space crisis is a result of his failure to foresee that the experiment grow in the manner which it has.