



07 October 2021

Mr Eddy Kayihura

Chief Executive Officer

AFRINIC LTD

Dear Sir

Your letter dated 29 September 2021 addressed to our legal advisers and copied to the Judge of the Supreme Court of Mauritius refers.

We wish to place on record the following:

1. Further to your letters dated 27 August 2010 and 10 September 2021, Cloud Innovation Ltd has provided detailed and comprehensive explanations in its letter dated 12 September 2021.
2. As per your letter dated 29 September 2021, you refuse to recognize our extensive explanations set out in our letter dated 12 September 2021.
3. By way of the present response, Cloud Innovation reiterates its stand set out in its letter dated 12 September 2021. It further states that:
  - (i) Cloud Innovation is a Resource Member since 2013 which has been allocated IP resources for use in accordance with the RSA, Bylaws and CPM.
  - (ii) Cloud Innovation has been and is at all material times a compliant Resource Member.
  - (iii) AFRINIC has made allegations on the basis of an affidavit of a third party that the IP resources are being used for illegal purposes.
  - (iv) Cloud Innovation took immediate action by requesting for "actionable information" from AFRINIC in order to identify such alleged illegal use by end users.



- (v) AFRINIC has failed to provide any actionable information and confirmed in its affidavit in case bearing serial number 1382/2021 that it does not have any actionable information or evidence, save and except for unsubstantiated allegations contained in an affidavit of a third party namely Mr Hare Brown ("Brown Affidavit")
- (vi) Cloud Innovation has clearly set out that the allegations in the Brown Affidavit are extremely vague and do not contain sufficient information to allow Cloud Innovation to take any useful or effective action. In addition, Brown Affidavit is factually wrong in recognizing the elements of Cloud Innovation's network. For example, there are over 1.5 million websites hosted in Cloud Innovation's IP addresses, while Brown Affidavit only stated six thousand. Mr. Brown claimed Cloud Innovation announces millions of IP addresses with MTN, while the fact is Cloud Innovation has long stopped its announcement with MTN years ago. The very fact Mr. Brown claims to have made a police report on such urgent issue. The fact that Cloud Innovation has been contacted by neither Interpol nor Mauritius police regarding the matters, shows the is indicative of the veracity of the Brown Affidavit as well as the legitimacy of his data.
- (vii) Notwithstanding the above, AFRINIC has refused to act diligently and refused to take into consideration any of the responses provided by Cloud Innovation.
- (viii) Cloud Innovation reiterates that it can only act on received abuse reports which contain sufficient detail to be verifiable and actionable. Cloud Innovation requires all of its customers to comply with its abuse policy and acts promptly on each and every actionable abuse report received.
- (ix) Cloud Innovation has no legal authority to monitor use of internet by each and every user as this would be clearly against established principles and laws governing privacy in various jurisdictions. Where such monitoring is done, it is generally by the relevant regulatory or law enforcement authorities in their applicable jurisdictions.
- (x) There is no ISP or telecom provider to the best of our knowledge which monitors user traffic or user generated content and/or polices them. The monitoring systems that AFRINIC repeatedly mentioned are primarily used by large nation's law enforcement in their respective jurisdictions, with operational budgets in the hundreds of millions and even billions of dollars, which is beyond what can be afforded by most private enterprises. Further, we don't believe it is within AFRINIC's power, as a private



company, to leverage its registration database and hence its monopoly power, by threatening to terminate members, to obtain such monitoring data on a continental level. Since every user in all nations in AFRINIC service region is using AFRINIC's IP, it will effectively give AFRINIC access to monitor data of billions of users. Such access is not even made available to the law enforcement in their local jurisdiction, not to mention on a continental level. However, AFRINIC being a private company is claiming such access without any competent court order. Beyond the questionable legality of enacting this purported mandate from AFRINIC, we are unable to identify any clause in the RSA which entitles AFRINIC to impose such a burden upon its members and we put them to the proof thereof.

- (xi) Notwithstanding the above, AFRINIC has failed to provide any actionable information and/or any further information which would allow Cloud Innovation to take the appropriate action or even verify their allegations. As such, we seriously doubt the veracity of their allegations and put them to the strict proof thereof.
- (xii) It is therefore clear that AFRINIC is only making vague and unsubstantiated allegations which cannot be verified, entirely on the basis of the Brown Affidavit without affording any opportunity for Cloud Innovation to address any of the purported allegation and/or take any action in whichever form.

4. **Cloud Innovation does not host any website except its own corporate website. It certainly does not host any of illegal types of content as described by AFRINIC. Hence, we put them to the strict proof thereof.**
5. Cloud Innovation therefore denies the contents of your letter dated 29 September 2021, reiterates its letter dated 12 September 2021. **Cloud innovation denies liability over user generated content by our customers or customers of our customers, and further states that Cloud Innovation's liability on user generated content shall stop at addressing actionable and verifiable abuse reports in compliance with its abuse policy spelled out in its customer contracts and where applicable, reporting abuse or having its customers report such abuse to competent law enforcement authority.**
6. Solely on moral ground, we are extremely concerned with the seriousness of presumptions contained in AFRINIC's letter. We demand that AFRINIC drop its overreaching claim to have monitoring data over billions of users. Instead AFRINIC should work cooperatively with us to



stop such abuse in the internet by providing actionable information instead of making empty allegations and then obstructing any efforts to address the actual problem.

7. Overall, Cloud Innovation is complying with all of its obligations under the RSA.
8. As such, Cloud Innovation denies each and every point of AFRINIC letter and Cloud Innovation further denies that AFRINIC letter constitutes a response, and asserts that failing a response from AFRINIC, Cloud Innovation's claim of the doctrine of acquiescence by estoppel shall apply on its original schedule.
9. AFRINIC has ten days to respond or the doctrine of acquiescence by estoppel shall likewise apply to this correspondence and by extension to the original correspondence as well.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Paul Lam', is written over a light blue circular background.

Paul lam

Cloud Innovation