

Report

Final report - new top level domains of national importance



NORWEGIAN MINISTRY
OF TRANSPORT AND COMMUNICATIONS

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Abbreviations and terms

AG	Applicant Guidebook Proposed Final Version. (This is not the final version since it was not approved at the ICANN meeting in Cartagena, Colombia in December 2010.)
AoC	Affirmation of Commitments. Agreement entered into on 30 September 2009 between the US Department of Commerce and ICANN.
ASCII	American Standard Code for Information Interchange.
ccNSO	Country Code Names Supporting Organization.
ccTLD	Country Code Top Level Domain. The highest domain in the hierarchy of the global domain name system according to the list of country names in the ISO-3166-1 standard.
DAG	Draft Applicant Guidebook. A draft drawn up by ICANN with an overview of rules, requirements, procedures and guidelines for applicants of new generic top level domains. Four versions were issued prior to the AG.
DNS	Domain Name System. This is literally a globally distributed database. The system is spread over thousands of computers on the Internet that contain information on the connection between domain names and IP addresses. These computers are known as name servers.
DoC	Department of Commerce. This US department is responsible for agreements and issues related to ICANN.
DOK	Domain Dispute Resolution Board. Dispute resolution body in Norway, which was established under Section 7 of the Domain Regulation.

DRP	Dispute Resolution Procedure.
Fast Track Process	Process in ICANN for ensuring a more rapid introduction of IDN ccTLDs for countries that do not use a Latin script.
GAC	Governmental Advisory Committee. Advisory body in ICANN that advises ICANN's board on rules established in ICANN bylaws.
GNSO	Generic Names Supporting Organization.
gTLD	Generic Top Level Domain. The highest domain in the hierarchy of the global domain name system. Historically these consisted of only 3 letters, such as .com and .org, but this was expanded in 2004 to enable more than 3 letters, such as .museum and .name.
IANA	Internet Assigned Numbers Authority. Responsible for the global coordination of the DNS Root, IP addresses and other IP protocol parameters. IANA is an integrated part of ICANN but is still referred to as the IANA function since its work is very specifically defined and is carried out in accordance with a contract with DoC and ICANN.
ICANN	Internet Corporation for Assigned Names and Numbers.
IDN	Internationalized Domain Names. Domain names represented by letters/characters from non-ASCII scripts. These include the Norwegian letters æ, ø and å. In this document, IDN is referred to in connection with ccTLD, which is defined as a country code top level domain with letters/characters from scripts that do not use Latin letters.
IP	Internet Protocol.

IP addresses	All computers with an Internet connection must have a unique address. This address is known as the IP address, and is made up of a long series of numbers. The domain names represent the IP addresses.
ISO	International Organization for Standardization.
ISO 3166-1	International standard with a list of country and territory names throughout the world and a corresponding 2-letter code.
ISO 3166-2	International standard with a list of sub-divisions for country and territory names throughout the world as specified in the ISO 3166-1 list.
ITU	International Telecommunication Union.
MoU	Memorandum of Understanding.
NORID	Norwegian Registry for Internet Domain Names.
Norpol	NORID's advisory body, which contributes to the development of rules for the assignment of domain names (domain name policy) for .no.
NTIA	National Telecommunications and Information Administration. Directorate under the US Department of Commerce (DoC).
PDDRP	Post-delegation Dispute Resolution Procedure.
Registry	Companies that, in accordance with an agreement with the international administrator of top level domains, have the authority to assign domain names in the top level domain. Norid is one such registry, and as such processes applications, carries out registrations and maintains the technical and administrative aspects of national top level domains. With regard to gTLDs, the registry is a company that has a registry agreement with ICANN, e.g. VeriSign for .com.
RFC	Request for Comments. Abbreviation for Internet standards published by the Internet Engineering Task Force (IETF).

SIDN	Foundation for Internet Domain Name Registration (Netherlands).
Subsidiarity principle	The principle that the ccTLDs' resources shall be administered in accordance with local/national needs and regulations.
TLD	Top Level Domain.
Trademark Clearinghouse	A mechanism that enables trademark holders to include their trademarks in a register that is used by applicants of new gTLDs in order to clear the domain prior to application and registration.
UDRP	Uniform Domain-Name Dispute-Resolution Policy.
UPU	Union Postale Universelle. The Universal Postal Union, which was established as a body under the UN.
URS	Uniform Rapid Suspension System.
WIPO	World Intellectual Property Organisation.
WSIS	World Summit on the Information Society. Arranged by the UN in the form of two meetings held respectively in Geneva in 2003 and Tunisia in 2005.

1 Summary

The working group's review is based on the ongoing work under the auspices of ICANN aimed at expanding the number of top level domains (TLDs) in the domain name system (DNS). The background for introducing more TLDs on the Internet has been to facilitate growing competition and innovation in the domain market.

The working group has reviewed the technical structure and division of the DNS. There are two main categories of TLDs; national/geographic (ccTLD) and generic (gTLD). The most important difference between the administration of the ccTLDs and the gTLDs is the national sovereignty of the administration of the ccTLDs versus the global and ICANN-regulated administration of gTLDs.

In section 2.2.1.4.2 of the Applicant Guidebook (AG), national authorities are given the right of veto in relation to the implementation of certain types of gTLDs in accordance with the procedure for documentation of support or non-objection. Pursuant to the mandate from the Ministry of Transport and Communications, and on the basis of a review of the processes in ICANN, the working group has defined TLDs of national importance as new geographic gTLDs for which Norwegian authorities are granted the right of veto in relation to implementation.

There is currently no national strategy or national regulations on handling cases where national authorities and ICANN both set the terms for implementation of new gTLDs. This is the main challenge faced by national authorities in relation to the international development, and the main focus of the working group's report.

Trademarks as new gTLDs are a major topic of discussion within ICANN. Trademark protection, defensive registration and consumer confusion are just some of the areas that have been discussed. The working group believes that the authorities should consider whether a "contact point" should be established for businesses with regard to information on protecting trademark interests within the new gTLD regime.

It is reasonable to assume that any new gTLDs of national importance will primarily be aimed at the Norwegian market. The development in the national domain market, including the need for new gTLDs of national importance will, however, depend on the development in the global domain market. International experience shows that out of the 21 existing gTLDs, only .com, .net and .org have managed to capture major market shares in addition to the national ccTLDs. This illustrates the difficult competitive situation in the domain market.

The working group believes that the difficult competitive situation and the high costs for the application and management of a new gTLD will be limiting factors with regard to the desire to establish a new gTLD of national importance, particularly when viewed in relation to the size of the Norwegian domain market.

The working group has concluded that there are currently no signs in the market to suggest a need for gTLDs of national importance. However, an accurate projection of future needs would be difficult. The Internet is developing at a rapid pace, and new ideas concerning the use of domain names are constantly emerging.

Whether the introduction of gTLDs of national importance is desirable depends on, in the opinion of the working group, whether a new gTLD could add value to the Norwegian domain market beyond increased competition for existing TLDs. The working group's conclusions in relation to the need and desire for new gTLDs indicate that Norwegian authorities should devise a policy and strategy for processing any future applications to register new gTLDs of national importance.

The working group was tasked with considering how to safeguard the appropriate and responsible management of TLDs of national importance. To this end, the working group has reviewed the legal framework in relation to ICANN.

A registry for a new gTLD of national importance shall have a contractual relationship with both Norwegian authorities and ICANN. In cases where the registry breaches the terms of the agreement with Norwegian authorities, it is absolutely vital that ICANN follows up any ensuing legal decision made in Norway.

The working group has considered alternative assignment procedures for potential applicants of new gTLDs of national importance, and believes that the best way of selecting relevant registries for new gTLDs of national importance will be a "beauty contest". Beauty contests are a suitable way for the authorities to "filter" applicants and streamline the subsequent negotiations on documentation of support or non-objection. After the beauty contest, the working group recommends that more extensive negotiations on documentation of support or non-objection are carried out for the relevant gTLD. The working group has identified some key components that it believes are important for the authorities to regulate in the agreement with the registry.

The working group believes that national authorities under the Ministry of Transport and Communications should be the highest decision-making authority in relation to the introduction of gTLDs of national importance. Introduction of this type of gTLD should always be considered at a national level.

By referring to the TLD model that new gTLDs of national importance are placed under, it can be seen that setting framework conditions and clarifying roles between national authorities, registries and ICANN is complicated and more unpredictable for gTLDs compared to ccTLDs. Since Norwegian regulations in this field are of an overarching nature and determine the fundamental principles for administering this type of public resource, the working group believes that the Domain Regulation should be amended in order to make it applicable to new gTLDs of national importance.

2 Working group - background, composition and mandate

2.1 Background

Under the auspices of ICANN,¹ work is underway to increase the number of top level domains in the Internet. Top level domains are henceforth referred to as TLDs² in this document. ICANN was established in 1998 and has overall responsibility for the organisation and administration of Internet names and addresses. With its head office located in California, USA, ICANN works within the framework of the contract with the United States Department of Commerce (DoC³).⁴ ICANN is a non-profit organisation and consults with the various participants in the Internet community in its decision-making processes.⁵ Norwegian authorities are represented in ICANN's work by the Norwegian Post and Telecommunications Authority's (NPT) representation in the Governmental Advisory Committee (GAC)⁶. UNINETT Norid AS (Norid) participates as the Norwegian registry in the Country Code Names Supporting Organization (ccNSO).⁷

The background for expanding the TLD name space has been to facilitate increased competition and innovation in the domain market. ICANN's obligation to promote increased competition is stipulated in the organisation's Articles of Incorporation of 21 November 1998⁸ and defined in the original agreement between ICANN and the US DoC of 25 November 1998 (MoU).⁹ Competition continues to be a key point in the latest agreement between ICANN and the US authorities dated 30 September 2009 (AoC).¹⁰ The background for expanding the TLD name space has also been to increase the accessibility to the Internet globally by introducing TLDs in scripts other than the current Latin script (ASCII¹¹), including Chinese, Arabic and Cyrillic. The latter are known as IDN.¹²

The international effort aimed at implementing¹³ new TLDs has been a long process. The work was initiated in 2007 with the GAC establishing principles for creating new gTLDs.¹⁴ In October 2008, ICANN published the first draft of guidelines for applicants of new gTLDs,

¹ Internet Corporation for Assigned Names and Numbers - www.icann.org/

² Top-Level Domains - <http://www.icann.org/en/tlds/select>.

³ United States Department of Commerce

⁴ Affirmation of Commitments - <http://www.icann.org/en/documents/affirmation-of-commitments-30sep>

⁵ Not-for-profit public-benefit corporation <http://www.icann.org/en/transparency>

⁶ Governmental Advisory Committee, www.gac.icann.org

⁷ ICANN Governmental Advisory Committee. ICANN Country Code Names Supporting Organization <http://www.icann.org/en/structure/>

⁸ <http://www.icann.org/en/general/articles.htm>

⁹ <http://www.icann.org/en/general/icann-mou-25nov98.htm>

¹⁰ Affirmation of Commitments, <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>

¹¹ <http://en.wikipedia.org/wiki/ASCII>, the DNS protocol only permits ASCII characters. In order to enable the use of other types of characters in DNS, technical standards had to be developed.

¹² Internationalised Domain Names - <http://www.icann.org/en/topics/idn/>

¹³ Implementation covers all stages in the process relating to new TLDs – from application to creation in the root zone.

¹⁴ GAC Principles regarding new gTLDs, http://www.gac.icann.org/system/files/gTLD_principles_0.pdf, see appendix 3.

known as DAG version 1.¹⁵ A substantial number of objections and comments were made to this proposal from many parts of the Internet community. Between 2008 and July 2010, ICANN amended the guidelines several times and published DAG versions 2, 3 and 4. On 12 November 2010, ICANN published the Applicant Guidebook Proposed Final Version, henceforth known as AG.¹⁶ Some modifications to AG must be expected, however, the key principles for establishing new gTLDs are regarded as final and definitive as described in AG. The main principles are of significance to Norwegian authorities' national administration of domain names and form the basis for the working group's assessments and recommendations.

Preparations for new TLDs in non-Latin scripts have been carried out parallel to the processes concerning the different versions of DAG. ICANN originally wanted the new gTLDs to be implemented at the same time as the new IDN ccTLDs in order to ensure equal conditions of competition for entering the market. After pressure from India and Egypt, among others, ICANN realised that the need for TLDs in more scripts is so precarious that parts of the process concerning IDN ccTLDs have been speeded up in a Fast Track Process.¹⁷ In October 2009, ICANN enabled the implementation of IDN ccTLDs with country or territory names in accordance with the ISO 3166-1 standard. The countries covered by the Fast Track Process are those with official languages that have a non-Latin script. Norway is not therefore included. Whether Norway may qualify for an IDN ccTLD in the future, for instance if the criteria for obtaining an IDN ccTLD are changed, depends on the policy process linked to IDN ccTLDs that ICANN has commissioned. This is expected to be finalised in 2012. Any potential IDN ccTLD is most likely to be placed under an administrative regime similar to the existing ccTLDs, i.e. with a national right to manage. This will give Norwegian authorities full control in relation to introduction and administration.

2.2 Composition

In order to be at the leading edge of the international development in the domain field, the Ministry of Transport and Communications established a working group in February 2010 to assess the need for new TLDs of national importance. The working group was tasked with identifying the best way of ensuring the appropriate and responsible management of this type of public resource. The working group was further tasked with preparing a report as part of the decision basis for the Ministry of Transport and Communications' assessment of a new model for the management of new TLDs of national importance.

¹⁵ Draft Applicant Guidebook (DAG) - <http://www.icann.org/en/topics/new-gtlds/dag-en.htm>

¹⁶ gTLD Applicant Guidebook, Proposed Final Version, <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>

¹⁷ <http://www.icann.org/en/topics/idn/fast-track/>

The working group was made up as follows:

Ørnulf Storm – Head of Section, Norwegian Post and Telecommunications Authority, chairman

Thomas Nortvedt – Deputy director, Consumer Council of Norway, member (until June 2010)

Svenn Richard Andersen - Adviser, Consumer Council of Norway, member (replaced Nortvedt from June 2010)

Jon Bing – J.D., University of Oslo, member

Solrun Dolva – Head of Section, Norwegian Industrial Property Office, member

Rune Foshaug – Head analyst, Abelia, member

Annebeth B. Lange – Head of legal department, UNINETT Norid AS (Norid), member

Elise Lindeberg – Senior adviser, Norwegian Post and Telecommunications Authority, secretary

The working group has held a total of 8 one-day meetings, which took place in Oslo and Lillesand. A number of conference calls have also been made, in addition to e-mails on discussions on specific topics.

Several of the working group members are involved in monitoring international Internet administration and domain name administration. The representatives in the group from the Norwegian Post and Telecommunications Authority and Norid take part in and follow up their own specialist fields within ICANN. The Norwegian Industrial Property Office follows the processes in WIPO. Members from these bodies have kept the other members of the group up to date on the international development during the period the working group has been active.

2.3 Mandate

The working group received the following mandate in a letter from the Ministry of Transport and Communications dated 5 February 2010:

“The working group is tasked with preparing a report on its assessments and recommendations on the following topics.

1. Assess the desire and need for more top level domains with a Norwegian identity

The Ministry of Transport and Communications requires the working group to review and assess the need for more top level domains with a Norwegian identity. The working group shall accordingly devise a proposal for a potential uniform Norwegian strategy for new Norwegian top level domains. The working group must take account of the solution selected by ICANN for distinguishing between gTLDs and ccTLDs in connection with the establishment of new TLDs of national importance.

Assuming that the working group concludes by recommending the introduction of new top level domains with a Norwegian identity, the working group shall consider what types of Norwegian top level domains should be permitted, and which should not be permitted (national reservations).

2. Review alternative assignment procedures

The working group shall review alternative assignment procedures for applicants of top level domain names. The working group is also tasked with considering which forms of assignment procedures are most appropriate for Norway, e.g. auction, lottery or a first come first served approach.

3. Support/non-objection procedure

The working group shall consider the expediency of standardising a Norwegian support/non-objection procedure and draw up a proposal for this. The Ministry of Transport and Communications also requires the working group to consider what requirements should be set for applicants of new Norwegian top level domain names.

4. Management model for new Norwegian top level domains

It is important for the Ministry of Transport and Communications that the registry that is granted permission to establish top level domains of national importance to Norway is managed responsibly and in line with the interests of Norwegian society. The working group is therefore tasked with considering the best way of ensuring appropriate and responsible management. Reference is made in this regard to the work undertaken in connection with the preparation of the current Domain Regulation. The working group shall consider whether the current Domain Regulation can be applicable to new top level domains with a Norwegian identity, with amendments or modifications where relevant. An assessment must also be made of whether other mechanisms are needed to enforce the basic requirements.

In the event that the working group decides there is a need to change the legislation on electronic communication, or the associated regulations, the working group shall, as far as is appropriate, provide input on suitable regulation. Any concrete proposals for provisions shall be substantiated and the justification must be included.

The working group shall discuss the challenges that will arise if the registry decides to terminate or sell its business after registering the top level domain. The working group is further tasked with identifying and discussing alternative models on dispute resolution and withdrawal.

5. Administrative and financial consequences

The Ministry of Transport and Communications requires the working group to assess the administrative and financial consequences of the proposals presented in the report. The consequences of a proposal shall be assessed in relation to all overarching or general considerations that may be significant to the assessment of whether the proposals shall be implemented. The working group shall, as far as is possible, submit at least one proposal based on the existing resource use in the field. Refer to the rules on impact studies in the instructions for studies and reports.

6. National geographic top level domains

The working group¹⁸ shall identify relevant authorities for future contact on the basis of the potential for establishing new top level domain names with national geographic attachment. The working group is required to recommend which administrative body at municipal or regional level is best suited to commenting on the creation of new Norwegian domain names with a geographic attachment. For instance, in the event of the top level domain .oslo being created, the relevant body of authority could be Oslo's Commissioner, Oslo City Council or other representatives of Oslo Municipality.

7. Collecting information

The working group is further tasked with collecting information on views and processes in other Nordic countries in relation to the future expansion in the number of top level domain names.

8. Report title

The working group shall determine the title of the report to be drawn up.

9. Organisation of the working group's size

The Ministry of Transport and Communications wants to establish a working group consisting of 6 members, in addition to a secretary. The working group will tentatively be made up as follows:

Members:

- 1. Representative of the Norwegian Post and Telecommunications Authority, as chairman, Ørnulf Storm*
- 2. Representative of the Consumer Council of Norway, Thomas Nortvedt*
- 3. Representative of Abelia, Rune Foshaug*
- 4. Representative of the Norwegian Industrial Property Office, Solrun Dolva*
- 5. Representative of UNINETT/Norid, Annebeth B. Lange*
- 6. Representative from academia, J.D. Jon Bing*

Secretary:

- 1. Representative of the Norwegian Post and Telecommunications Authority, Elise Lindeberg*

10. Schedule of the process

The working group should be organised with regular meetings in 2010. The working group is further expected to prepare a plan of progress and submit it to the Ministry of Transport and Communications as soon as the group has been appointed in January/February 2010. The Ministry hereby presents the following schedule for the working group:

- Work of working group initiated, January/February 2010.*
-

- *Completion of report, submitted to the Ministry of Transport and Communications before the start of 2011.*

3 Structure and division of DNS

3.1 Technical structure of DNS

The Internet is a complex infrastructure made up of networks, junction points, routers and computers. The value of the Internet to society is primarily the services that are run on the infrastructure. All computers with an Internet connection have an IP address, which is made up of a long series of numbers. It is not practical to use these number series directly, so DNS¹⁹ is used to create a simple identifier for the number series and to identify Internet pages by linking unique domain names to the relevant IP address.

DNS is the Internet's "telephone catalogue". When using the telephone to contact someone, you start by looking up the person's name in a directory such as Yellow Pages. In the same way, a domain name is used to look up the domain name system to find an IP address. This address is used to contact the computer hosting the service you require. In the same way that a telephone call does not go through the actual directory, Internet traffic is not routed through the domain name system.



Figure 1 – Comparison between DNS and the telephone catalogue - Source UNINETT Norid AS

For instance, DNS translates the domain name regjeringen.no to the IP address that contains the government's website. DNS functions purely as a distributed database spread over many computers known as name servers. By making a slight change in the name server, the domain name regjeringen.no will point to a new host machine, and the users will be unaware of the switch.

The domain name system is a distributed database with a hierarchical structure. This solution is used because it would not be practical for only one organisation to have responsibility for the management and updating of all addresses on the Internet.

¹⁹ Domain Name System

The domain name system is structured with the sub-domain/name first and the top domain last, after the full stop in the address, e.g.: regjeringen.no, where regjeringen is the sub-domain/name and .no is the top domain. Currently, Norwegian domain names often take the form companyname.no.

These are most commonly used in website addresses, e.g.: <http://www.companyname.no/> - and in e-mail addresses, e.g.: <mailto:forename.surname@companyname.no>.

The DNS hierarchy is like a root system. The root system, as shown in the illustration, reflects the technical structure and apportionment of responsibility. Designated organisations have responsibility for the various branches at each level.

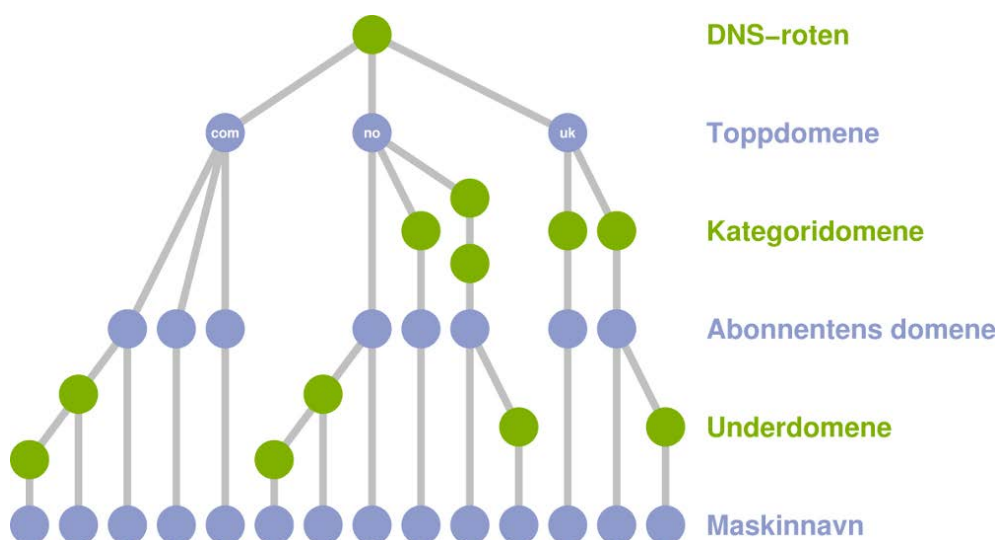


Figure 2 – Domain name system - Source UNINETT Norid AS

The top level in the root system; the DNS root, is the responsibility of ICANN through IANA.²⁰ IANA is responsible for all changes in the root zone. This responsibility is regulated by a contract with the US authorities (DoC) and ICANN. Major changes in the root zone must be approved by the US authorities through NTIA.²¹ The changes are made in a “hidden”²² root server and copies of this are forwarded to the 13 root server operators²³ throughout the world. These have responsibility for the management and maintenance of the relevant root servers. In the last 15 years, the various root server operators have established copies of their own root servers. More than 200 such copies currently exist throughout the world²⁴. Norid and other registries for top domains use this technology in order to achieve greater stability and availability of their own name servers.

²⁰ Internet Assigned Numbers Authority (IANA) - <http://www.iana.org/>

²¹ <http://www.ntia.doc.gov/>

²² Referred to as “hidden” since this root server is not accessible on the Internet for DNS queries.

²³ <http://www.root-servers.org/> The 13 root servers are identified using the letters A to M.

²⁴ Copies are established using Anycast technology.

The next level in the root system is the top level domains (the TLDs), which have two main categories; country code top level domains (ccTLDs) and generic top level domains (gTLDs). The registries are responsible for managing the individual top level domains, e.g. Norid manages the Norwegian ccTLD .no and VeriSign²⁵ manages the international gTLD .com.

3.2 Division of DNS

There are two main categories of TLDs within DNS; the national/geographic, known as ccTLDs²⁶, and generic, known as gTLDs.²⁷ A total of 250 ccTLDs have been established worldwide. Norway was assigned .no for Norway, .sj for Svalbard and Jan Mayen, and .bv for Bouvetøya. All three are administered by Norid, but .no is the only one in current use. A total of 21 gTLDs have been established in DNS. Examples of these are .com for commercial services and .org for organisations. In recent years, the use of some sponsored gTLDs has been established, such as .museum and .jobs. The sponsored top level domains are normally self-explanatory and are organised by private companies or organisations with regard to registration requirements etc. Different rules apply to the administration of ccTLDs and gTLDs. This has been a determining factor in the working group's approach to the mandate from the Ministry of Transport and Communications.

3.3 Administration of ccTLDs

In the 1980s, IANA delegated the ccTLDs to private individuals or entities/institutions associated with research environments in each individual national state. All of the national states worldwide²⁸ were delegated at least one unique ccTLD. IANA's policy on how the ccTLDs should be administered is stipulated in the Internet standard RFC 1591.²⁹ One of the stipulations of the standard is that IANA shall act in accordance with the ISO 3166 list when assigning ccTLDs.

In the aftermath of the assignment of the ccTLDs, written agreements or other negotiated forms of understanding between the registries and ICANN have been entered into. The agreements are adapted for local conditions and mainly consist of an exchange of letters, where agreement is expressed on the main principles for administration and cooperation. The collective name is Accountability Framework.³⁰ Norid is an example of a registry that has an

²⁵ <http://www.verisign.com/corporate/index.html>

²⁶ Country Code Top Level Domain – currently all TLDs with two letters

²⁷ Generic Top Level Domain – currently all TLDs with more than two letters

²⁸ Based on the ISO 3166 -1 standard list - (standard of country names and codes),

²⁹ Description of IANA's delegating practice – <http://www.iana.org/go/rfc1591>

³⁰ <http://www.icann.org/en/cctlds/agreements.html>.

understanding with ICANN through the exchange of letters.³¹ Together with RFC 1591, the foregoing forms the international basis for administration of the individual ccTLDs.

The key principle for the administration of the ccTLDs is that they shall be administered in accordance with the interests of the local/national Internet community, otherwise known as the subsidiarity principle. Administration shall be in accordance with the relevant country's regulation within the area. Norway's ccTLDs are administered in accordance with Regulation no. 990 of 1 August 2003 on domain names under Norwegian country code top level domains (Domain Regulation).³²

The subsidiarity principle is found in RFC 1591 and is reinforced in Principles and Guidelines for Delegation and Administration of Country Code Top Level Domains, which was penned by the GAC in 2005, section 1.2:

“The main principle is the principle of subsidiarity. ccTLD policy should be set locally, unless it can be shown that the issue has global impact and needs to be resolved in an international framework. Most of the ccTLD policy issues are local in nature and should therefore be addressed by the local Internet community, according to national law.”

The UN General Assembly decided in 2001 that the International Telecommunication Union (ITU) should arrange the World Summit on the Information Society (WSIS). This consisted of two summit meetings; one in Geneva in December 2003 and one in Tunisia in November 2005. The meetings were attended by around 40 heads of state and governments, and 11 000 participants. A plan of action and statement of principles were approved at the first meeting. The second meeting approved a follow-up agenda (Tunis Agenda for the Information Society). The principle of national sovereignty for the ccTLDs is not laid down in an overarching international agreement, but is referred to in paragraph 63 of the follow-up agenda.³³

“Countries should not be involved in decisions regarding another country's country code top level domain (ccTLD). Their legitimate interests, as expressed and defined by each country, in diverse ways, regarding decisions affecting their ccTLDs, need to be respected, upheld and addressed via a flexible and improved framework and mechanisms.”

The form of agreement for the ccTLDs is historically determined. ICANN was established after the ccTLDs had been assigned to the nations by Jon Postel, who was head of IANA from its inception. Postel initiated the assignment of the ccTLDs to the local Internet community. He helped to determine a number of key principles for the administration of resources in DNS, including the principle of TLDs as a public resource, whereby the administration, use and development of TLDs should be performed as a service and in the interests of the Internet community.

It may be claimed that the system for national sovereignty of the ccTLD resources is fragile since it is based on individual agreements, understandings or acceptance between ICANN/IANA and the local registry. However, it must be stressed that national sovereignty

³¹ <http://www.icann.org/en/cctlds/no/norid-icann-letters-17jul06.pdf>

³² <http://www.lovdato.no/for/sf/sd/xd-20030801-0990.html>

³³ WSIS Tunis Agenda for the Information Society, para 63 (WSIS-05/TUNIS/DOC/6(Rev.1)-E)

of the ccTLDs is internationally recognised as described in the section above with reference to Tunis Agenda paragraph 63. To date, no disputes have arisen in connection with this principle.

In relation to national sovereignty, various models have been developed for administering the ccTLDs. At one end of the spectrum are the registries for ccTLDs that are part of the public sector, and where the regulations on administration and self-assignment of domain names are regulated by law, e.g. in Finland. The Finnish Communications Regulatory Authority (FICORA) is responsible for administering and assigning domain names under the ccTLD .fi in accordance with the legislation on domain names in Finland.

At the other end of the spectrum are the registries in the private sector, where the administration of the national ccTLD is exclusively governed by the registry itself and private law contracts with the registrars and domain registrants. One example of this is England, where the administration and assignment of domain names under the ccTLD .uk are carried out by Nominet, which is a private non-commercial organisation. Nominet's organisation and operation is subject to English law. .uk domains are administered and assigned in accordance with private regulations on .uk, which were established by Nominet through consultation with the local Internet community. The administration model for the Norwegian ccTLDs is placed between these two extremes in order to reap the benefits of both models.

Pursuant to Act no. 83 of 4 July 2003 relating to electronic communication (Electronic Communications Act) Section 7-1, Norwegian authorities have overall responsibility for the administration of numbers, names and addresses for electronic communication, including domain names. The Authority also has a regulatory role in accordance with Section 10-1 of the Electronic Communications Act. Under the provisions of the Electronic Communications Act, Norwegian authorities have set official legal framework conditions for the administration of the Norwegian ccTLDs in the Domain Regulation. The Norwegian administration model combines the governing of legislation and regulations with private regulations set by Norid.³⁴ Norid operates as a non-commercial organisation in the private sector, but is owned by the state. For further information on the background of the Norwegian administration model for the ccTLDs, refer to the report “.no eller aldri...”.³⁵

There is a growing international trend of authorities' identifying a need for national regulation and governmental influence in relation to the use of the country's ccTLD resources. In relation to the development of the Internet, this must be regarded as a basic factor in the development of society, in terms of economics and culture, as well as socially. Until now, the Norwegian administration model has safeguarded the stability and predictability of the administration of .no. The Domain Regulation stipulates the framework conditions and the overarching guidelines for the utilisation of resources of the Norwegian ccTLDs. Within the framework of the Domain Regulation, the Norwegian administration model enables rapid

³⁴ See the domain name policy .no, <http://www.norid.no/navnepolitikk.html>

³⁵ http://www.regjeringen.no/nb/dep/sd/dok/rapporter_planer/rapporter/2002/no-eller-aldri-Forvaltningsmodell-og-tvistelosning-under-norsk-domeneadministrasjon.html?id=424532

adaptation of the regulations on .no in line with the development of the Internet and the changing needs of Norwegian domain registrants.

3.4 Administration of gTLDs

The first gTLDs were implemented by IANA in 1985; .com, .edu, .arpa, .gov, .net, .org and .mil. In 2000, ICANN introduced a further seven gTLDs after market consultation; .aero, .biz., .coop, .info, .museum, .name and .pro. Then came .asia, .cat., .jobs, .mail, .mobi, .post and .tel. There are currently 21 gTLDs in the market. An agreement has also been entered into between UPU³⁶ and ICANN for .post, which is soon to be added to the root. Those dominating the market for gTLDs are .com, .net and .org, - where .com holds a special position with regard to success in the international market.

As opposed to the ccTLDs, gTLDs are administered globally. In principle, they are intended for registration and use by the entire Internet community. ICANN has a cooperation with GNSO³⁷ for the setting of overarching principles for administration of the gTLDs. The registry for the individual gTLDs enters into an agreement with ICANN for the administration of the top level domain globally, including payment of a fee to ICANN for each registered domain under the relevant gTLD.

The legal agreements³⁸ between ICANN and the registry for administration of the individual gTLDs have been published on ICANN's website. The working group has not reviewed all of these agreements, but is aware that the fees payable to ICANN vary between the different gTLDs. The working group is also aware that ICANN has reserved the right to make certain amendments to contractual terms during the period of agreement.

3.5 Differences in the administration regime

The main difference between the administration of the ccTLDs and the gTLDs is the national sovereignty in the administration of the ccTLDs as a national/local resource versus the global and ICANN- regulated administration of a gTLD as an international resource. This has a bearing on which dispute resolution models are applicable, among other things. With regard to the administration of the gTLDs, using the UDRP procedure³⁹ through WIPO is mandatory. Many ccTLDs also use this procedure, however they can choose between UDRP or local/national dispute resolution systems. The differences in the administration regime between the gTLDs and the ccTLDs are the basis for many of the discussions in ICANN in connection with increasing the number of TLDs on the Internet.

³⁶ Universal Postal Union, <http://www.upu.int/>

³⁷ Advisory body for ICANN - Generic Names Supporting Organization

³⁸ <http://www.icann.org/en/registries/agreements.htm>

³⁹ <http://www.wipo.int/export/sites/www/amc/en/docs/UDRPflowchart.doc>

The authorities' representatives in the GAC and the representatives for existing ccTLDs in ccNSO have been in lengthy negotiations with ICANN in order to ensure national/local influence on the implementation and administration of new TLDs that are of national/local interest, including geographic names. The basis for the GAC and ccNSO has been that TLDs with national/local interest should be placed in an administration regime where national/local influence is far greater than is the case under the gTLD regime. The representatives for the gTLDs in GNSO have, on the other hand, put up a strong argument for new TLDs to be placed under the ordinary gTLD regime, since this ensures equal conditions of competition for new and existing gTLDs.

ICANN insisted for a long time that all new TLDs, except for IDN ccTLDs, should be placed in the gTLD category, with an international administration regime under US state law. ICANN argued that an administration model of this type would be the best basis for growth in the TLD market. National/local influence will complicate the application process for new TLDs and incur high costs and a considerable amount of bureaucracy.

The GAC and ccNSO have pointed out that ICANN's main basis of income is generated from the gTLDs, and that this is considered to be a key reason why ICANN wants new TLDs to be placed in this category. Revenues generated from the gTLDs are currently related to the agreement terms that are negotiated between the registry and ICANN. A fee is paid according to the number of registered domains under each gTLD. The fees vary, but overall provide a good source of income for ICANN.

The registries pay a voluntary contribution to ICANN for the ccTLDs, which is intended to cover ICANN's administrative work and the services that IANA performs for the registries. The contributions vary and are not dependant on the number of registered domains under the individual ccTLD. ccNSO and ICANN have a running dialogue on the size of the contributions. ICANN claims that the administrative costs for ICANN/IANA exceed the current contribution. No cost analysis/accounts have been submitted to substantiate this claim, and the ccTLDs will not agree to an increase in their contributions without sufficient documentation.

Discussions are ongoing as to whether the ccTLDs should pay a contribution to ICANN in relation to the size of the ccTLD, i.e. in relation to the number of registered domain names. ccNSO has opposed this payment model in the strongest possible terms, and points out that the services it receives from ICANN/IANA are not dependant on the number of domains that are registered in the individual country. Payment according to the number of registered domain names will therefore be a form of domain taxation, which in turn will contravene the subsidiarity principle of the ccTLDs.⁴⁰

Since guidelines and terms were drawn up for establishing new TLDs in 2007, the GAC has taken the view that increasing the number of TLDs may increase the competition on the Internet, as well as its accessibility. Consequently, the GAC has been eager to convey the message that it is not the aim of the authority to stop the implementation of new TLDs. The

⁴⁰ <http://www.icann.org/en/cctlds/agreements.html>

deciding factor for the GAC has been to protect the stability and safety of the Internet and safeguard the national states' control of what are considered to be national/local resources.

In the negotiations between ICANN, advisory bodies such as the GAC and support organisations such as ccNSO, the parties have realised that implementing new TLDs is the entering into of compromises.

The ongoing process in ICANN as of December 2010 has resulted in the following in relation to the overarching administration regime for new TLDs:

- Introduction of IDNs where registration of TLDs is permitted in non-Latin scripts (e.g. Chinese, Arabic and Cyrillic). Registration of IDNs with country and/or territory names in accordance with the ISO 3166-1 standard has been provisionally approved. This is limited to countries with non-Latin scripts as an official language; the Fast Track Process. New IDN ccTLDs will be placed under the applicable ccTLD regime.
- Country and territory names will not be considered in the first round of applications for new gTLDs. An example of this type of domain is .norge. ICANN has decided to defer the decision on whether country and territory names should be implemented as new TLDs and which category (ccTLD or gTLD) these shall be placed in. The final decision on the administration regime for country and territory names will not be made until 2012.
- Setting the main terms for applicants of new gTLDs in AG,⁴¹ which are drawn up by ICANN in consultation with advisory bodies and support organisations. AG is a guideline on the application processes in ICANN for the approval of new gTLDs. AG contains information on the stages in the application process, costs for applicants, registry contracts, the registrar system and dispute resolution mechanisms. AG has around 300 pages including appendices.

Discussions and negotiations will continue between ICANN, advisory bodies and support organisations on parts of the content that are proposed in AG. However, the key principles have been finalised. These are important to Norwegian authorities' national domain name administration and the future administration model for any new top level domains of national importance. For example:

- New gTLDs can, in principle, consist solely of words, including trademarks, category names, concept names etc.
- A number of geographic names, including names of capital cities, cities/towns and counties, will be placed in the gTLD category.
- The national/local right of veto is introduced in relation to the implementation of certain types of geographic gTLDs. Applicants of a gTLD must submit documentation of support or non-objection from the relevant authority in order for ICANN to process the application.
- A procedure is proposed for the re-delegation of geographic TLDs if a breach of the terms for documentation of support or non-objection has been identified.⁴²

⁴¹ Applicant Guidebook proposed final version, <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>

⁴² See the report, section 7.3 – concerning changes in re-delegation from DAG version 4 to AG

- Permission is given for new IDN gTLDs to be introduced.

4 Focus area for Norwegian authorities – interpretation of mandate

The working group's mandate is to report on the assessment of an administration model for any new top level domains of national importance.

The working group's mandate does not include considering the need for and administration of new ccTLDs. Norway is not qualified to implement IDN ccTLDs by the Fast Track Process, and clarification of country and territory names as new TLDs has been postponed until 2012. In the event that the development in ICANN results in Norway having the opportunity to establish more ccTLDs after 2012, the working group assumes that any new ccTLDs will, notwithstanding, have to follow the existing regime for the ccTLDs, with full national control of introduction and administration.

If country and territory names were to be placed in the gTLD category, the working group is of the opinion that this must entail at least as stringent requirements for documentation of support or non-objection from the relevant authority as for the requirements for capital city name, city/town name and county name. The working group's assessments and recommendations will thus also be relevant to the country and territory names. However, it should be noted that the working group has not made any further assessment of country and territory names as TLDs of national importance, since these have been excluded from the process in ICANN for the time being.

Section 2.2.1.4.2 of AG gives national authorities the right of veto in the implementation of certain types of new gTLDs in accordance with the procedure for documentation of support or non-objection. This applies to some geographic gTLDs, i.e. capital city names in accordance with the ISO 3166-1 standard and town names, where use of the latter is mainly linked to the actual town itself. This also applies to names according to ISO 3166-2,⁴³ which, for Norway, will be the 19 county names and abbreviations for Jan Mayen, Svalbard and the Continental Shelf. The requirement for documentation of support or non-objection in accordance with ISO 3166-2 is primarily included in order to satisfy countries with a strong national and local identity linked to regions, such as the USA and its states, and provinces in Europe such as Provence, Tuscany and Catalonia.

Norwegian authorities have received an application to establish .oslo as a new top level domain. In accordance with AG 2.2.1.4.2., .oslo will be a gTLD, where implementation and the processing of applications in ICANN depend on the applicant submitting documentation of support or non-objection from Norwegian authorities. In accordance with the foregoing, applications for .bergen, for example, will also have to be accompanied with documentation of support or non-objection if the domain is to be used to profile the city of Bergen. However, no such approval is needed from authorities if .bergen is to be used to profile a brand of shoe with the same name, for instance.

⁴³ http://no.wikipedia.org/wiki/ISO_3166-2:NO

Text from AG proposed final version ⁴⁴

2.2.1.4.2 Geographic Names Requiring

Government Support

The following types of applied-for strings are considered geographic names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

1. *An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard. In this case, it is anticipated that the relevant government or public authority would be at the national level.*
2. *An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name. City names present challenges because city names may also be generic terms or brand names, and in many cases no city name is unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired. An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:
 - (a) *It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and*
 - (b) *The applied-for string is a city name as listed on official city documents.⁷ In the case of an application that meets conditions (a) and (b), documentation of support will be required only from the relevant government or public authority of the city named in the application.**
3. *An application for any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard. In this case, it is anticipated that the relevant government or public authority would be at the sub-national level, such as a state, provincial or local government or authority.*

With regard to geographic names other than those mentioned above, AG does not give Norwegian authorities the right of veto or co-determination in connection with implementation. For example, names of parts of the country such as South Norway, North Norway etc. If Norwegian authorities want to prevent such gTLDs from being established, this will have to be done by means of the dispute resolution mechanism that is proposed in module 3 in AG. Complaints can be raised based on 4 defined grounds:

- String confusion objection
- Legal rights objection
- Morality and public order objection
- Community objection

AG does not give Norwegian authorities any kind of right of veto or co-determination with regard to the implementation of Norwegian-based trademarks as gTLDs; it is up to the individual market player to decide if he wants his own trademark to be a gTLD.

⁴⁴ <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>

The working group has limited its coverage of this matter to a brief guide on the challenges faced by the market in relation to trademarks as new gTLDs.

In accordance with the mandate from the Ministry of Transport and Communications and the above account of the processes in ICANN, the working group has defined TLDs of national importance as new geographic gTLDs in which Norwegian authorities are given the right of veto for implementation, and a requirement is set for documentation of support or non-objection from Norwegian authorities. This therefore applies to Oslo as a capital city name, other Norwegian city and town names, abbreviations for Jan Mayen, Svalbard and the Continental Shelf and Norwegian county names. In the report, the generic term used for these place names is gTLDs of national importance.

There is currently no national strategy or national regulations on handling cases where both national authorities and ICANN set terms for implementation of a new gTLD. This is national authorities' main challenge in relation to the international development, and the main focus of the working group's report.

5 Trademarks – role of the authorities

Commercial and non-commercial operations alike are dependent on the Internet nowadays. The Internet is a unique arena for marketing and selling products and services. Domain names and the identifier function on the Internet are vital to the profiling of a business and its trademarks. Trademark is defined here as a distinctive hallmark of goods or services. The working group notes that the problems referred to in relation to trademarks will also apply to company name rights.

Until now, trademarks have been registered at level 2 within DNS, i.e. trademark.no or trademark.com. AG enables the registration of trademarks directly as a gTLD, i.e. trademark. Norway has a number of international trademarks that may be relevant as new gTLDs, e.g. .statoil, .telenor, .jotun and .jarlsberg.

Trademarks as new gTLDs is a major discussion point within ICANN. Topics of discussion have included the protection of trademarks, defensive registration and consumer confusion. Active participants in the discussion with ICANN include the UN organisation WIPO⁴⁵, lobbyists from private trademark organisations and the authorities/GAC.

The latter has been particularly interested in the consumer aspect and the risk of increased pirate operations and misrepresentations on the Internet through illegal use of trademarks of other businesses.

5.1 International protection of trademarks

The protection of trademarks system is currently based on a business' rights in a defined geographic area for specific goods/services. Several corporate bodies can therefore have a right to a trademark if the said trademark is linked to different goods and services, or if the trademark is used in different geographic areas. Due to the global nature of the Internet, and the fact that domain names are unique, it is not possible to have a similar system for trademark protection in DNS.

Until now, various rights holders have registered domain names on level 2 under a number of ccTLDs and gTLDs. By doing so, market players with a right to the same trademark have been able to register under different gTLDs. The introduction of trademarks as gTLDs creates new problems. If a local player registers a trademark as a gTLD, or at level 2 under a gTLD in order to gain benefits from being associated with/confused with another (and larger) market player, the domain name policy of "first come first served" could create confusion in the market and among consumers. The rights holders are also concerned about cases where someone that does not have a connection to a trademark registers this as a gTLD in order to sell competing products or pirate products, or to entice customers to their own website etc. Such activities will be detrimental to both rights holders and consumers.

⁴⁵ World Intellectual Property Organization - <http://www.wipo.int/amc/en/domains/>

In connection with the different versions of DAG, WIPO has forwarded a proposal that is aimed at addressing some of the concerns that the business community has had in connection with new gTLDs. ICANN has considered some of the input and presented the following suggestions in AG:

- Pre-Delegation Dispute Resolution Procedure – procedure to be followed before a top level domain is assigned.
- Trademark Clearinghouse, which is aimed at trademark holders being able to log their trademarks in a register that is used by applicants of new gTLDs to clear the domain name prior to registration (applies to top level domains and sub-domains).
- Guidelines for dispute resolution at level 1 – disputes relating to the actual registration of a trademark as a new gTLD, known as a Dispute Resolution Procedure (DRP), and Post-Delegation Dispute Resolution Procedure (PDDRP).
- Guidelines for dispute resolution at level 2 – disputes relating to registrations under the gTLD, known as Uniform Rapid Suspension System (URS). This facilitates an administrative dispute resolution system in addition to the Uniform Dispute Resolution Procedure (UDRP), which has worked for existing gTLDs. Unlike the UDRP, the domain name cannot be transferred, only suspended.

WIPO is sceptical as to whether the aforementioned mechanisms are effective enough, and believes that the burden is too great for trademark owners with regard to enforcing their own rights. WIPO has therefore stated that the introduction of trademarks as new gTLDs must take place at a controlled pace in order to test the system. WIPO is also concerned that rights holders may feel increasingly pressured into registering the protection of their own trademarks at level 2 on steadily more new gTLDs.

5.2 Recommendations – role of the authorities

When businesses register trademarks or company names with the Norwegian Industrial Property Office and/or the Brønnøysund registers, the authorities do not have any responsibility to intervene if rights are infringed. The business itself must follow up any infringements by taking administrative or legal action.

Due to the value of industrial property rights to industry and consumers, Norwegian authorities are working on ensuring that mechanisms are established which facilitate the protection of rights. The Norwegian Industrial Property Office therefore wishes to highlight the importance of commitment from authorities also within new gTLDs.

Norwegian authorities' role in the protection of national trademark interests will primarily be linked to contributions and visibility within the international efforts in this field. Through their participation in the GAC, Norwegian authorities are involved in highlighting the risk of confusion, the need to protect consumers from pirate copies of products etc. and the need to

establish effective dispute resolution mechanisms. The Norwegian Industrial Property Office takes part in meetings in WIPO and has an overview of the specialist discussions in this area.

The working group believes that the authorities should consider whether a “contact point” should be established for the business community with regard to information on protecting trademark interests within the new gTLD regime, including information on rules for registering new gTLDs and the dispute resolution mechanisms that are available.

6 The need for more gTLDs of national importance

In its evaluation of the need for more gTLDs of national importance, the working group reviewed figures on the Norwegian TLD market. The working group has examined the capacity utilisation of .no and the use of other TLDs that are available to Norwegian domain registrants. The working group has also reviewed the main trend in the global domain market and considered the competitive situation and success factor of existing ccTLDs and gTLDs. The degree of saturation, the assignment and the development in the TLD market are all important basis material in the evaluation of the need for new gTLDs of national importance.

6.1 Statistics – the national domain market

It is not known what drives the growth of the number of domains in a country. The size of population appears to be a factor that is seen in the majority of growth models. This implies that Norway has a smaller market for domain names than, for instance, Sweden.

Norid has figures from 2010 that show the total level of saturation/degree of utilisation within the ccTLDs in the Nordic countries.

- Denmark: approx. 187 domains per 1,000 persons
- Sweden: approx. 102 domains per 1,000 persons
- Norway: approx. 98 domains per 1,000 persons
- Finland: approx. 44 domains per 1,000 persons

The figures do not differentiate between domain registrations made by private individuals and organisations/companies. If we consider that, to date, Norway has not permitted private individuals directly under .no, and look at registrations from organisations/companies, the figures differ somewhat:

- Denmark: approx. 112 domains per 1,000 persons
- Norway: approx. 98 domains per 1,000 persons
- Sweden: approx. 87 domains per 1,000 persons
- Finland: approx. 39 domains per 1,000 persons

The latter figures are interesting because they show that Norway has a higher degree of saturation than Sweden, despite the difference in population size.

In a global perspective, Denmark has an extremely high degree of saturation in relation to its own ccTLD. This is partly because Denmark established .dk before the .com trend took off, and companies and private individuals therefore registered the .dk domains before the .com domains had captured a dominating market position. Norway and Sweden have roughly the same degree of saturation. Finland's degree of saturation, with around 44 domains per 1,000 inhabitants, stands at a respectable level, but is significantly lower than other parts of the Nordic region.

Nominet's⁴⁶ report on the domain market from 2010 discusses market penetration calculated from the number of ccTLDs per 1,000 inhabitants.

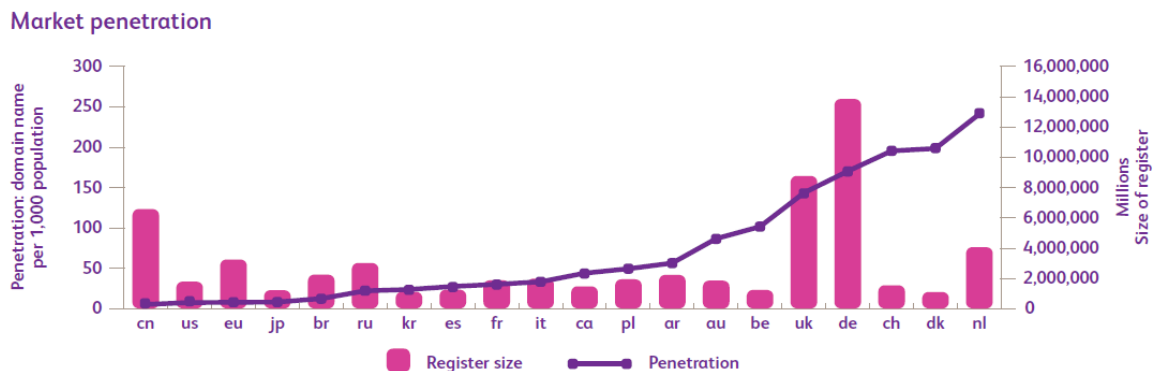


Figure 3 – Market shares for ccTLDs - Source Nominet

Compared with ccTLD registrations in other countries in Europe and North America, an analysis from 2008 of the growth in domains in 20 countries in Europe and North America⁴⁷ shows that there are relatively many ccTLDs with a lower degree of saturation than .no. The analysis also shows few clear drivers of the domain market, with the exception of growth in the use of the Internet. It is therefore difficult to find clear answers to the question of why some countries have a higher degree of saturation in the domain market than others. Factors that are assumed to play a role include access to the Internet, the service offer that is available on the Internet and the regulatory situation in relation to registration rights under the national ccTLD.

If we use the number of .no domains, .com domains, .net domains etc. that are registered by Norwegian registrants as a basis for calculating the market shares in the Norwegian domain market, we get the following result:

Among Norwegian businesses, .no has the largest market share with 56.2% of the total domain market. The .com gTLD has almost 28% of the Norwegian domain market, and the remaining gTLDs have slightly more than 16% in total. Domains under other ccTLDs registered by Norwegian companies (e.g. registrations under .as, .se and .dk) are not included.⁴⁸ Figures from 2006 to 2009 show that the breakdown in the TLD market in Norway has remained relatively stable in the past three years. It is important to note that the total TLD market has experienced considerable growth during this period.

⁴⁶ The registry for the British ccTLD .uk - <http://www.nic.uk/>

⁴⁷ The analysis was conducted by Dr Matthew Zook, Professor in the Department of Geography, University of Kentucky - <http://www.zook.info/>

⁴⁸ Figures on .no, 14 September 2009; Market share and gTLDs 2008: www.norid.no

TLD – market share in Norway

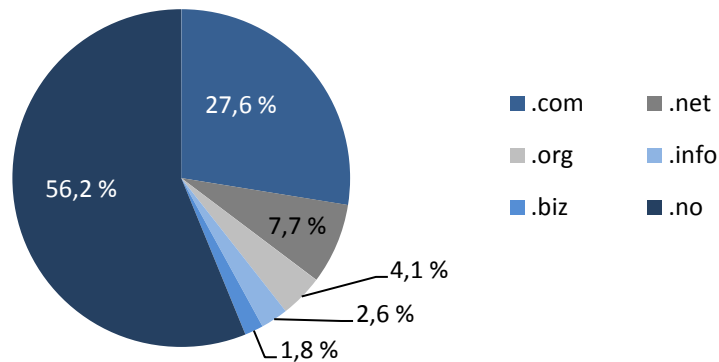


Figure 4 – Market shares for TLDs in Norway - Source UNINETT Norid AS

It could be argued that a direct count of the number of domain names does not give a full picture of the market shares, since organisations have registered domain names under several TLDs. Only one of these is used actively in some cases, while others are registered in order to prevent misuse of trademarks or company names, or point to the organisation's preferred domains. A market survey conducted by Norid in 2009 showed that 53% of the .no registrants covered in the survey have also registered domain names under other top level domains. In order to establish exactly how many of the registrants are doubled up or multiples under .no, .com etc., access is needed to data that is not currently publicly available. The closest we get to mapping market shares for the different TLDs in the Norwegian domain market is by comparing the number of domains under each top level domain.

As per December 2010, approximately 500,000 domain names are registered under .no. Although the degree of utilisation is high per capita in Norway compared with other countries, utilisation of our national ccTLD is far from full. The majority of domain registrants under .no have only one domain name, despite being able to register up to 20 domain names according to the regulation.⁴⁹ Over 96% of the registrants under .no have fewer than 10 domain names. This means that, for the majority of Norwegian domain name registrants, the quota under .no has little or no bearing on the capacity utilisation of .no.

The working group highlights below some of the details that are not apparent from the aforementioned figures:

- Although the number of domain names that can be registered under .no and other TLDs is very high, the number of “good domain names” is more limited. There is tough competition in the market for domains with intuitive names because they are, for instance, short, easily recognisable, popular in Internet searches etc.

⁴⁹ See the regulation on .no - <http://www.norid.no/navnepolitikk.html>

- Norid has received indications from a number of the major players in the Norwegian business community that they want an increased quota under .no. The interest in increasing the quota must be viewed in conjunction with the fact that .no is by far the most popular TLD in the Norwegian market. It is reasonable to assume that Norwegian domain registrants who perceive the current quota under .no as problematic will supplement their quota with domains under other TLDs that are available in the market. It is difficult to say for certain whether the utilisation under .no may affect the market situation for a potential new gTLD of national importance, since this will be partly dependant on whether a new gTLD will be regarded as an attractive profiling channel.
- Use of the Internet and technology have changed in recent years. Due to the growth in search engines, navigating to websites via a search engine is becoming increasingly more common than entering a domain name in the web browser. Although the domain name is pivotal when transferring services (websites, e-mail etc.) from one supplier to another, the visibility of websites is nowadays more about search engine optimisation and indexing than entering the relevant domain name. This factor must be taken into account when assessing the need for new gTLDs of national importance.

Figures on how many domains are already registered under .no and other TLDs in Norway provide a good basis for interpreting the main trends in the current domain market in Norway. .no is the clear dominant and preferred TLD with a very strong market position, but the market is also open to and demands other available TLDs.

It is reasonable to assume that any new gTLDs of national importance will primarily be aimed at the Norwegian market. However, the development in the national domain market, including the need for new gTLDs of national importance, will depend on the development in the global domain market.

6.2 Statistics – the global domain market

The current global domain market is dominated by the major gTLDs, and a few major ccTLDs. The figure shows the development from 2000 to 2010.

The global market

Global domain name registrations

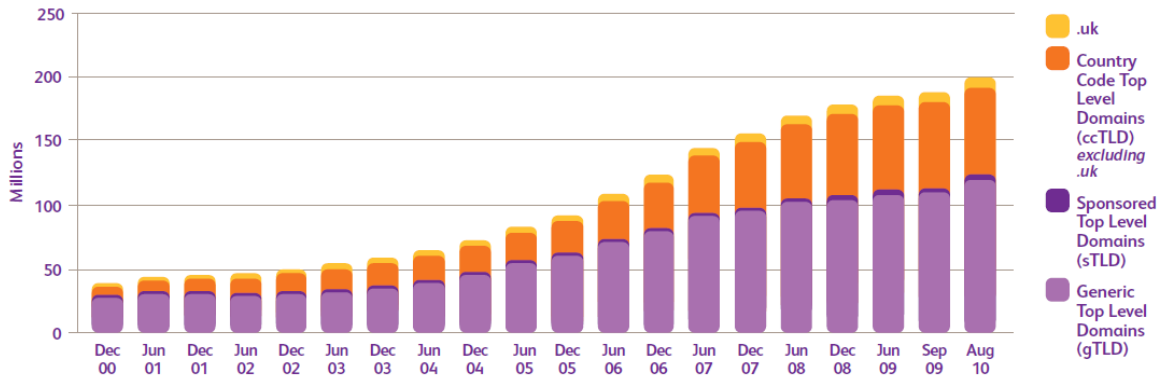


Figure 5 – Market shares for TLDs in the global market - Source Nominet

The largest TLDs as of February 2010 are (in descending order): .com, .cn, .de, .net, .uk, .org, .info, .nl, .eu and .ru. In total, the three largest ccTLDs (in descending order): .cn, .de and .uk, represent 44 per cent of all ccTLD domains in the world.

The effort to increase the number of TLDs on the Internet is, as already mentioned, motivated by a desire to have more options, and increase innovation and competition in the domain market. The experience to date, however, has been that it is very difficult for new gTLDs to capture major market shares from the established domain market.

It has been demonstrated that it is a major competitive advantage to be one of the gTLDs that were first established. .com, .net and .org currently hold a superior market position despite the subsequent introduction of .aero, .biz., coop, .info, .museum, .name, .pro and .biz. These are examples of gTLDs that were created as an alternative to .com in order to provide a larger name space and another (but similar) product. None of these have had any great success.

In relation to the market shares of ccTLDs in the global domain market, early introduction and liberal assignment criteria are factors that have enabled some ccTLDs to grow. Nevertheless, it is primarily the size of population, i.e. customer potential, that has been the determining factor. Two of the “new” players that have captured a large market share are .eu and .cn. The common denominator between the major ccTLDs with a substantial share of the global domain market is that they all permit registration from international organisations and private individuals, and they do not restrict the number of domains permitted per subscriber. Another factor that is significant is whether requirements have been set for identification. Experience shows that non-bona fide players are less inclined to register domains in markets where anonymous registration is not permitted. A requirement for identification can therefore result in fewer registrations but simultaneously reduce the number of problems linked to pirate operations and the hoarding of domain names.

The conclusion is that the key driver for multiple registrations is a large customer potential and substantial propagation of the Internet in the catchment area.

6.3 The need for more gTLDs – global perspective and assessments

In ICANN, discussions are taking place on whether opening the global gTLD market will increase competition or whether it will primarily lead to major problems and costs for industry and trademark owners.

In the ICANN meeting held in Seoul in 2009, WIPO reported that an estimated 90% of current domain registrations by trademark owners are defensive registrations⁵⁰, i.e. registration is undertaken in order to prevent loss of rights or misuse of trademarks. Defensive registrations generate income for ICANN, the registrars and the registries, but are regarded overall as a negative aspect of the domain market.

WIPO and some businesses have indicated that the new gTLD regime may lead to rights holders being pressured into registering their own trademarks as new gTLDs in order to prevent loss of rights and pirate operations. There is also concern that rights holders may feel pressured into safeguarding their own trademark at level 2 under an increasing number of gTLDs. However, it is important to emphasise that the said businesses also believe that new gTLDs can generate new profiling opportunities for trademarks, organisations etc. and facilitate new business concepts, meeting places and niche concepts. Special mention must be given here to IDN gTLDs (e.g. .com in Chinese), which may offer national/local markets something new in relation to existing gTLDs with Latin scripts.

The international discussion on the need, advantages and disadvantages of introducing new gTLDs has not led to a re-evaluation of ICANN's main goal of a larger name space in DNS. Negotiations and adjustments in relation to some of the terms for implementing both gTLDs and ccTLDs are ongoing. The main aspects of the expansion of DNS, however, have been determined. The material premises and terms are now final in AG and the IDN ccTLD process. Any assessment of the need for new gTLDs of national importance must therefore be based on the assumption that the name space will eventually be opened up.

6.4 The need for new gTLDs of national importance – perspective and assessments

6.4.1 Survey – assessment of need

The working group has considered whether conducting a survey may provide the authorities with useful information on the need for new gTLDs of national importance in the Norwegian domain market.

⁵⁰ See transcript from GAC Plenary session in Seoul, <http://sel.icann.org/node/7076>

In connection with participation in the working group, Abelia has made a written enquiry to 10 of its member companies. Abelia has requested the companies' points of view on the introduction of gTLDs of national importance. Abelia has not received very substantial feedback from the respondents. The feedback that has been received is mainly concerning the fact that the subject is so complex and unfamiliar that it has not been possible to give qualified advice.

There will be groups or individuals that have sufficient information on the processes in ICANN to give qualified advice and feedback to Norwegian authorities. The vast majority of public interests will not, however, be in a position to assess the relevant problems without first researching the subject thoroughly. The working group therefore believes that the subject and the problems relating to new gTLDs are so unknown and so complex that a survey of companies or consumers would not be appropriate.

6.4.2 Market situation and costs

International experience shows that out of the 21 existing gTLDs, only .com, .net and .org have managed to secure substantial market shares in addition to the national ccTLDs. This illustrates the difficult competitive situation in the domain market. Some TLDs have captured a market position that gives almost unlimited potential for development and growth, while others struggle to be visible and gain confidence from the market.

The application process in ICANN for approval of a new gTLD will be a time-consuming and expensive exercise as it currently stands in AG. The fee for submitting and processing an application in ICANN is set at US \$ 185 000⁵¹ in AG. A minimum annual fee of US \$ 25 000⁵² has also been set. These amounts are intended to cover ICANN's administrative costs for the actual application process and the subsequent technical and administrative support. The fee levels have been the subject of great debate. ICANN has not been able to provide sufficient financial calculations to substantiate these amounts. In addition to fees for the processing of applications and management, a fee will be payable by the registry for a new gTLD to ICANN according to the number of domain registrations. The size of the latter will vary according to the agreement with ICANN. The costs in connection with the implementation and management of a new gTLD entail a considerable financial investment and risk for a new registry.

The working group believes that the uncertain competitive situation and the high costs for application and management of a new gTLD will be limiting factors with regard to the desire to establish a new gTLD of national importance, particularly in relation to the size of the Norwegian domain market.

⁵¹ Page 44 of AG

⁵² Page 194 of AG

6.4.3 The potential for innovation and new business concepts

The working group has considered whether more gTLDs of national importance will benefit society in the form of innovation and new business concepts.

Abelia believes that the players in the domain market are best suited to assessing the potential for new gTLDs. Registries, registrars and Internet users are the most qualified to drive innovation and new business concepts in relation to new gTLDs. Abelia believes that the authorities' role should primarily be as facilitator, in order to ensure that new and existing TLDs are utilised to their best potential for the good of society. The authorities' involvement in business concepts and assessing gains to society should be restricted to an overseeing role, i.e. not providing detailed guidelines for management of the TLDs.

The Norwegian Industrial Property Office stresses that introducing one or more gTLDs of national importance can generate new marketing channels for the companies. However, it also points out that new gTLDs with a national identity, such as .oslo or .bergen, can mean higher costs for Norwegian trademark owners in the form of defensive registration in order to prevent misuse of their trademark.

6.4.4 Consumer confusion

The Consumer Council of Norway points out that expanding the national name space may lead to user confusion, whereby different market players own the same domain name at level 2, e.g. bakerhansen.no, bakerhansen.oslo. Sharing rights to domain names at level 2 is also current practice in relation to, for instance, parallel use of domain names under .no and .com. However, it is envisaged that parallel use of domain names under TLDs of national importance will confuse Norwegian users to an even greater extent than before.

6.4.5 Weighing up the advantages and disadvantages

The working group has weighed up the aforementioned advantages and disadvantages that may arise from new gTLDs of national importance. The conclusion of the group is that national authorities should expect and require a new gTLD of national importance to add value to the Norwegian domain market other than purely being competition to existing TLDs. Anyone wishing to establish a new gTLD of national importance must have a clear idea of innovation and/or new business concepts in connection with the introduction of a resource of this nature.

6.5 Recommendation – need and desire for new gTLDs of national importance

The working group has concluded that there are currently no signs in the market of a need for gTLDs of national importance. The figures available and the knowledge that we possess on the market indicate a large amount of available capacity under .no. It is clear that the national market can utilise existing gTLD resources as a supplement to or instead of .no.

It is difficult to give an accurate projection of future needs. The Internet is developing rapidly, and new ideas on the use of domain names are emerging. For example, the ongoing processes in Germany and France, where the authorities have started negotiations for establishing .berlin and .paris respectively, as new gTLDs. If more and more countries want and permit their own capital city name or other city/town names to be gTLDs, this could provide a basis for new domain markets for profiling local/national businesses, tourist destinations and cultural facilities etc. Viewed in this context, the need for more gTLDs of national importance may change in relation to the current situation.

In an international perspective, it is more difficult to envisage domain markets emerging that will act as a driving force for Norwegian county names as new gTLDs or make them popular. This is because the “common denominator” for regional names will be extremely limited, e.g. .provence and .telemark.

Whether the introduction of gTLDs of national importance is desirable depends, in the view of the working group, on whether a new gTLD can add value to the Norwegian domain market beyond increasing competition for existing TLDs. Thus, the authorities should not draw their conclusions on a general basis but make an assessment that is partly based on innovation and business concepts in specific applications to Norwegian authorities.

Norwegian authorities have already received an enquiry (not an actual application) about .oslo. The working group generally recommends that Norwegian authorities wait until they receive real applications from market players before initiating a specific dialogue and process in relation to relevant gTLDs. Otherwise the authorities risk using a great deal of resources on considering new gTLDs that are not fully thought through or feasible.

The working group’s conclusion in relation to the need and desire for new gTLDs is that Norwegian authorities should devise a policy and strategy for processing any future applications to register new gTLDs of national importance.

7 Legal framework – new gTLDs

One of the tasks of the working group was to consider the best way of ensuring the appropriate and responsible management of TLDs of national importance. To this end, the working group believes that it is important to report on the legal framework in which ICANN operates, and the agreements on which the administration and management of new gTLDs of national importance will be based.

7.1 ICANN as an organisation

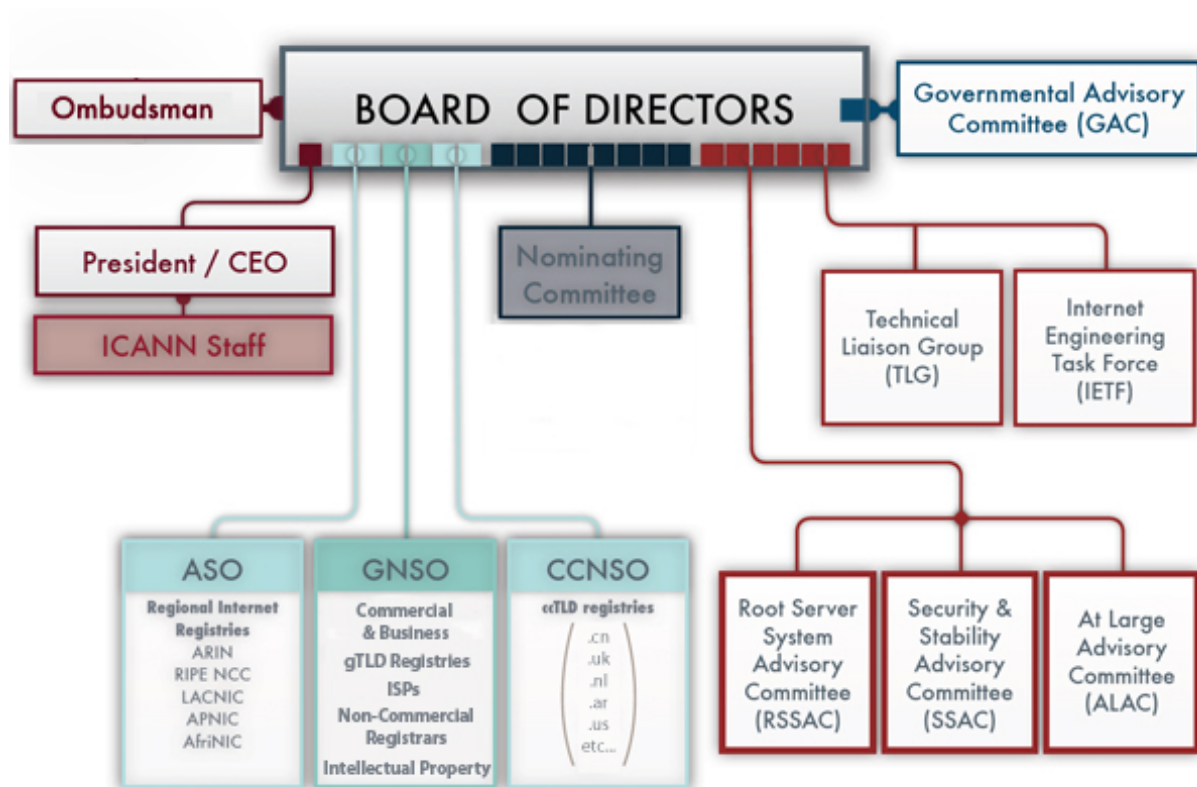


Figure 6 – Organisation chart ICANN - Source ICANN

ICANN is referred to as an international organisation. This description is also used for organisations that are founded by independent nations in order to strengthen the cooperation between the states. When setting up such organisations, the states will often transfer some of their own expertise to the international organisation, which is consequently given the authority, within defined frameworks, to practice its expertise. It should be emphasised that ICANN is not this type of international organisation. No expertise has been transferred to ICANN through a treaty between sovereign states; it is “just” a private law organisation – a foundation subject to US state law. When ICANN is referred to as international, this is

because ICANN has bylaws⁵³ that enable and assume cooperation through a system of private law agreements.

It is primarily ICANN's bylaws that determine and restrict ICANN's right to enter into agreements. ICANN is a not-for-profit organisation. Thus, its objective may set some limits on the types of agreements that ICANN can enter into. The most important guideline for entering into agreements, however, will be the statement in the Articles of Incorporation, cf. art. 4:

*“The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.”*⁵⁴

The key issue for the authorities in the individual countries in this regard is that ICANN has an obligation to respect applicable laws under all countries' jurisdiction.

7.2 Agreement structure

All of the registries for existing gTLDs have agreements with ICANN for the administration and management of their own gTLD resource.⁵⁵ The working group has reviewed the main lines in the existing agreement structure. This will be applicable to new gTLDs of national importance. The working group has also reviewed the supplements in the agreement structure that ensue from the obligation of the registry for gTLDs of national importance in accordance with the agreement with national authorities in relation to documentation of support or non-objection. First segment in the agreement structure for a gTLD:

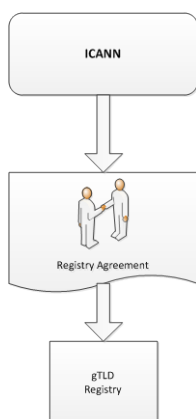


Figure 7 - Contractual relationship between ICANN and registry

⁵³ <http://www.icann.org/en/general/bylaws.htm>

⁵⁴ <http://www.icann.org/en/general/articles.htm>

⁵⁵ <http://www.icann.org/en/registries/agreements.htm>.

ICANN has an agreement with the registry. There are two parties here, and the content of the agreements is similar to that shown in the link to the agreement between ICANN and VeriSign, among others. With regard to new gTLDs, including gTLDs of national importance, a proposal has been drawn up for the agreement between the registry and ICANN, which is found in AG. The proposal contains the main components to be regulated. AG is not final and individual terms must also be expected to be included in the individual negotiated agreements between ICANN and the new registry. The next stage is the agreement between the registry and registrar:

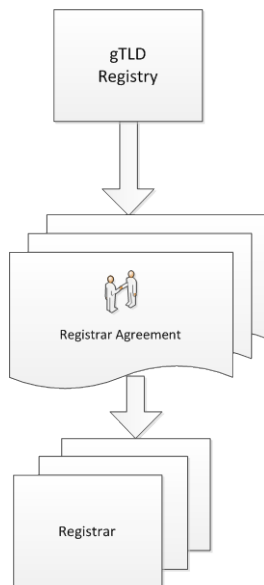


Figure 8 - Contractual relationship between registry and registrar

The registry does not enter into a direct agreement with the domain registrants. Agreements on domain registration are entered into between the registrants and registrars. Provided that a direct agreement has been entered into between the registrar and ICANN, any registrar that has been accredited by ICANN can operate in the market. The requirement to use ICANN-accredited registrars is supported in AG, also for gTLDs of national importance. This differs from what is applicable to the administration of our national ccTLD .no, where the market is also open to the registrars that are not accredited by ICANN. Norid enters into agreements with the individual registrar that operates in the market under .no.⁵⁶ Gaining accreditation from ICANN is an expensive and extensive process. To date, only two Norwegian registrars have this status.⁵⁷ Many of the Norwegian registrars will never manage to gain accreditation, and will not therefore have the opportunity to participate in the market for gTLDs of national importance. This may affect the competitive situation in the Norwegian registrar market, since only ICANN-accredited registrars will be able to increase their revenues and growth potential.

The requirement for ICANN accreditation for registrars is a controversial part of AG, and negotiations on this are still ongoing. The following is stipulated in the proposal for a contract between and the registries for new gTLDs, cf. AG, module 5:

⁵⁶ List of Norwegian registrars, <http://www.norid.no/domeneregistrering/registrarliste.php>

⁵⁷ These are Active 24 AS and Domeneshop AS, see the list of ICANN-accredited registrars: <http://www.icann.org/en/registrars/accredited-list.html>

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2.9 Registrars.

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with Registry Operator's registry/registrar agreement for the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD, provided that such agreement may set forth non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN. (b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN

Implementation of new gTLDs of national importance requires consent from the relevant authorities in the form of documentation of support or non-objection in order for an application to be processed by ICANN, cf. chapter 4 of this report. Which authorities can provide such support will be determined by national authorities. Module 2 of AG includes a proposal for written consent from the relevant authorities, known as a Sample Letter of Government Support. This is a support document that is drawn up for the authorities and its use is voluntary. The working group believes that the Sample Letter of Government Support is well formulated and gives the authorities good advice. Alternatives are given for the form of support from the authorities – either as overall support to an application by the registry as submitted to ICANN (optional 1), or as an appendix where it is highlighted that the support is given under further defined conditions in a separate agreement between the registry and national authorities (optional 2):

[Optional 1] *This application is being submitted as a community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the application. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.*

[Optional 2] *I can advise that in the event that this application is successful [xx government/public authority] will enter into a separate agreement with the applicant. This agreement will outline the conditions under which we support them in the operation of the TLD, and circumstances under which we would withdraw that support. ICANN will not be a party to this agreement, and enforcement of this agreement lies fully with [government/public authority].⁵⁸*

Introducing consent from the relevant authority for implementation of certain types of geographic gTLDs creates a new legal profile in relation to what is the case for the existing gTLDs. A three-way relationship is established here, where ICANN, the national authority and the registry are all involved as contracting parties in the implementation of certain types of gTLDs. From the authority's perspective, this presents major challenges in relation to controlling compliance/enforcement of the terms that the relevant authorities have set for documentation of support or non-objection.

⁵⁸ Sample Letter of Government Support - see appendix 2.

The figure below illustrates this three-way relationship, where the registry has a contract with both the authorities and ICANN, but where there is no contract between ICANN and the authorities.

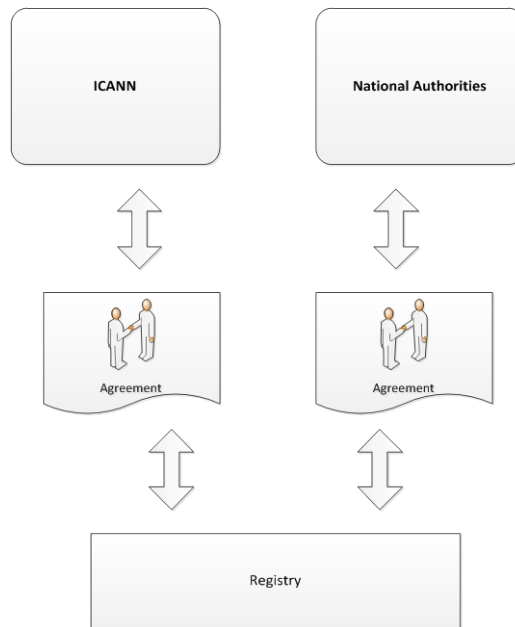


Figure 7 - Three-way relationship - ICANN - Registry - Authorities

The illustration below shows the contractual relationships as described.

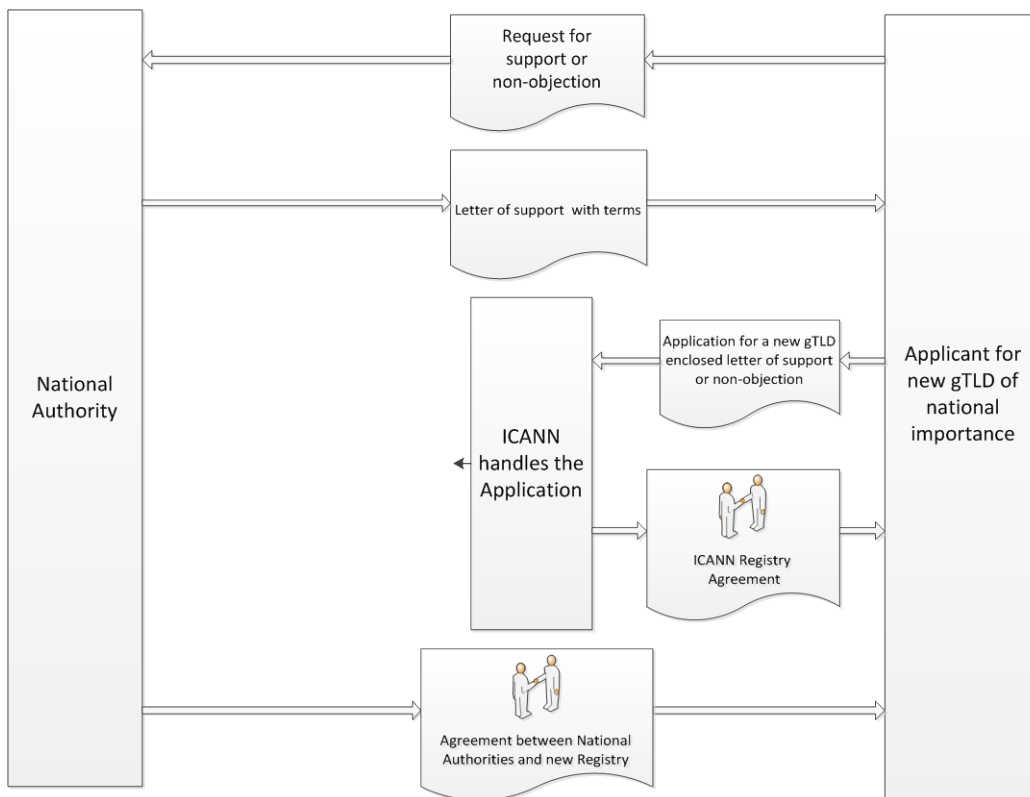


Figure 8 - Overview of contractual relationships

7.3 Post-delegation/re-delegation

Both optional 1 and optional 2 in ICANN's proposal for consent entail the relevant authority giving conditional support to establishing a gTLD of national importance. In optional 1, this relates to an overarching requirement for the relevant gTLD to be used in a way that is in-keeping with the description in the application to ICANN. In optional 2, it relates to more or less detailed terms in a separate agreement.

A situation may be envisaged where disagreement arises between Norwegian authorities and the registry for a gTLD of national importance in relation to compliance of the terms that the authorities have set for documentation of support or non-objection. The disagreement may, for example, be linked to safety and stability, costs, profiling, compliance with relevant regulations etc. In the worst case scenario, Norwegian authorities may believe that the infringement of terms is serious enough to warrant the withdrawal of the support or non-objection and removal of the gTLD from DNS, i.e. re-delegation. Unless the registry voluntarily agrees to this, the Norwegian authorities will technically be dependent on ICANN in order to impose such a sanction.

As shown in the illustration above, a registry of a new gTLD will have a contractual relationship with both the authorities and ICANN, but there will be no such relationship between ICANN and national authorities. In cases where the registry breaches the terms for documentation of support or non-objection, but upholds its obligations in relation to ICANN, ICANN may risk legal action in relation to its own contract if it imposes sanctions for breaches of a contract with the authorities which it is not party to.

NPT and Norid have been active in the GAC and ccNSO in order to get ICANN to acknowledge responsibility and reserve the right to sanction terms that the relevant authorities have set for documentation of support or non-objection. To this end, the GAC has called for a mechanism that, in the event of a worst case scenario, provides the opportunity to withdraw a gTLD as a consequence of a serious breach of the terms for the authorities' documentation of support or non-objection.

ICANN is not party to the agreements linked to documentation of support or non-objection, and has not had any interest in undertaking an independent responsibility for enforcing contract terms between authorities and the registry for new gTLDs. The aim of the GAC and ccNSO's efforts has been to make it possible for national authorities to provide documentation of support or non-objection on the condition that ICANN is bound by the agreement with the registry to adhere to a legally binding decision made within the relevant/national jurisdiction. The GAC and ccNSO managed to achieve this, as was formulated in DAG version 4, module 2 in the Sample Letter of Government Support.

"Government / public authority] further understands that the Registry Agreement provides that ICANN will comply with a legally binding decision in the relevant jurisdiction where there has been a dispute between [government/public authority] and the applicant"

In AG, ICANN has changed the text in the Sample Letter of Government Support:

[Government / public authority] further understands that the Registry Agreement provides that, in the event of a dispute between [government/public authority] and the applicant, ICANN may implement the order of any court sitting in such jurisdiction in favor of such governmental entity related to the TLD.

The term “may implement” has also been introduced in the proposal to the registrar agreement in AG, section 7.13:

“Government Support - In the event that the TLD was delegated to Registry Operator pursuant to the consent of a governmental entity to use a geographic name related to the jurisdiction of such governmental entity, the parties agree that, notwithstanding any provision contained in this Agreement, in the event of a dispute between such governmental entity and Registry Operator, ICANN may implement the order of any court sitting in such jurisdiction in favor of such governmental entity related to the TLD”.

The working group believes that it is absolutely vital for Norwegian authorities that the agreements include a clear provision stipulating that ICANN will follow up a legal decision made in Norway in the event of a breach of the agreement between the registry and Norwegian authorities. A legal decision may, as previously discussed, entail re-delegation. We believe such a provision existed in DAG version 4, but this was clearly diminished in AG. Reintroducing text from DAG version 4 was a major point of discussion at the ICANN meeting in December 2010. Both the GAC and ccNSO required the text and/or main intention from DAG version 4 to be included in AG. ICANN empathised with the argument concerning diminished control by the authorities. No final clarification had been made on this as of the start of 2011. All assessments made by the working group are based on the assumption that ICANN reintroduces the undertaking to adhere to legal decisions made in Norway, as was negotiated in DAG version 4.

The agreement between ICANN and the new registry will be subject to US law. The agreement between ICANN and the registry, including a provision stipulating that ICANN will adhere to legal decisions made by relevant/national courts, may be tried under US law in a US court. This cannot be avoided due to the way the agreement structure is designed for gTLDs. In the event that Norwegian authorities secure a decision of re-delegation and require this to be implemented by ICANN, there is the risk that the registry will take legal action in order to prevent ICANN complying with the provision to adhere to the decision made in Norway. The working group has not reviewed Californian law in relation to such a situation, i.e. whether the registry can legally prevent ICANN from complying with a national legal decision. However, it is important to be aware of the complex legal landscape that such matters entail, and that achieving actual implementation of a legal decision made in Norway may be a lengthy process for Norwegian authorities.

7.4 Summary – legal framework and agreement structure

The review of the legal framework and agreement structure shows that the geographic gTLDs of national importance constitute an intermediate category in relation to existing gTLDs and ccTLDs. ICANN has granted national authorities the right of veto for the introduction of certain types of geographic gTLDs. ICANN has further ensured that these gTLDs are placed in the existing gTLD regime, where the administration is regulated by agreement between the registry and ICANN. Norwegian authorities may set conditions for documentation of support or non-objection, and thus set terms and frameworks for the administration of a gTLD of national importance. Additionally, the registry and national authorities must act in accordance with the terms set by ICANN in negotiations with the relevant registry, including payment obligations to ICANN and use of accredited registrars. The key components of the administration of new gTLDs will be determined in the agreement between ICANN and the registry.

It may be the case that ICANN is willing to conduct individual negotiations on the terms in the standard agreement that is proposed between the registry and ICANN. This is something that will be clarified when applications are actually processed after AG has been adopted. The working group will draw on experiences from the recently concluded contract negotiations between ICANN and the registry for the new gTLD .tel. The registry for .tel has succeeded in negotiating the use of a “thin” WHOIS database for its domain registrants. This means that the domain registrants can choose to have certain types of personal information hidden externally in the WHOIS database. Norid uses a “thin” WHOIS database for domain registrations under .no, and this database is a key principle for processing personal data. Using a “thin” WHOIS database contravenes the terms that ICANN normally sets for the registries in relation to gTLDs, where there is a requirement for a “thick” WHOIS database with more visible information. Experience from .tel may indicate that there will be opportunities for individual negotiations also in relation to new gTLDs of national importance. It may, for instance, be pertinent for Norwegian authorities to ensure that the part of the Norwegian registrar body that is not ICANN-accredited is also given the opportunity to deal with domains under a new gTLD of national importance.

It is important to be aware that not all countries are interested in securing full national control of the administration of new gTLDs of national importance. This must be viewed together with the fact that national regulation of the ccTLDs varies considerably from country to country. Some countries (e.g. Germany) do not have any national legislation in the domain field, and prefer to leave the administration of gTLDs to market mechanisms to the greatest degree possible. A certain slide in opinions has taken place in the most liberal countries, where they have now realised the benefit of some influence by the authorities in relation to some types of geographic gTLDs (and for that matter also with regard to their own ccTLD, cf. last paragraph in section 3.3). This is why more countries are pressuring ICANN into establishing procedures for documentation of support or non-objection and re-delegation as described in DAG version 4. However, it is important to emphasise that it has never been

realistic to expect the GAC and ICANN to permit capital city names, city/town names and county names to be established as new ccTLDs according to the subsidiarity principle.

If Norwegian authorities believe it is vital to establish a new gTLD of national importance in an administration model that is almost identical to our national ccTLD .no, the opportunity to provide documentation for support or non-objection will depend on ICANN's willingness to negotiate in relation to the contract terms between ICANN and the registry. The working group advises the Norwegian authorities to make an assessment of any conflicts of interest between the authorities' requirements for an administration model and ICANN's contract terms once an actual application has been received by the authorities for establishing a new gTLD. On receiving an application, Norwegian authorities will be able to assess society's interest in establishing the relevant gTLD (cf. the main discussion in chapter 6 – development in the international market), set against the contract terms from ICANN and the opportunity to negotiate these in order to establish an acceptable administration model. An assessment of the competitive situation in the Norwegian domain market will also be relevant if the terms for managing a gTLD of national importance differ appreciably from the terms applicable to the management of a ccTLD.

The working group recommends in all cases that Norwegian authorities' documentation of support or non-objection to the management of a gTLD of national importance is determined under a separate agreement with more or less detailed terms for the administration and management of the resource. We therefore recommend that the authorities follow the principle of the model in optional 2 in the Sample Letter of Government Support. By doing so, Norwegian authorities will maximise their influence on the administration of this type of public resource.

The working group believes that if ICANN does not reintroduce the obligation for re-delegation as provided for in DAG version 4, this will result in authorities in many countries not being able to provide documentation of support or non-objection for a gTLD of national importance. Thus, in reality, ICANN will have blocked the market for a large number of geographic gTLDs. The working group considers the mechanism for enforcing national terms, such as those negotiated in DAG version 4, Sample Letter of Government Support, to be a basic prerequisite for enabling Norwegian authorities to provide documentation of support or non-objection for a new gTLD of national importance.

8 Alternative selection methods

The working group was tasked with reviewing and evaluating alternative assignment procedures for potential applicants of new gTLDs of national importance. The working group emphasises that Norid did not want to consider the various selection methods or take part in discussions or conclusions in relation to the selection method.

The working group has based its review and evaluation on Act no. 83 of 4 July 2003 relating to electronic communication (Electronic Communications Act)⁵⁹ Section 1-1, Purpose:

“The purpose of the Act is to secure good, reasonably priced and future-oriented electronic communications services for the users throughout the country through efficient use of society’s resources by facilitating sustainable competition, as well as fostering industrial development and innovation.”

The section covering Purpose is an important guideline for assessing which procedures are best suited to facilitating the rational utilisation of the type of public resource that a new gTLD represents.

The right to administer/manage a new gTLD will, for purely technical reasons in DNS, be exclusive to the party selected by the authorities. The Authority cannot divide this type of resource between several registries.

The working group’s discussions on this matter concluded that a selection/qualifying process should be undertaken in relation to potential registries for the administration/management of new gTLDs prior to more thorough negotiations on documentation of support or non-objection. It will not be necessary to discuss assignment at the selection/qualifying stage since there is no guarantee that the negotiations on documentation of support or non-objection will be fruitful (cf. the chapter on the management model for new gTLDs). Further discussions in this chapter therefore deal with the assessment of various selection methods/qualifying methods.

The working group refers to the provision on authorisation for use in Section 7-1, paragraph 3 of the Electronic Communications Act:

“The Authority may designate other public bodies or private entities to administer numbers, names and addresses for specifically limited purposes, including addressing databases.”

The working group believes that this provision gives Norwegian authorities the necessary national power to make a selection of a suitable registry for new gTLDs of national importance. The provision on authorisation for use, together with the terms of AG on the requirement for documentation of support or non-objection ensure that no one other than those selected by the authorities will administer a gTLD of national importance. However, the provision does not guarantee that the authorities’ selected registry will be able to successfully negotiate with ICANN on the implementation and administration of the relevant gTLD.

⁵⁹ <http://www.lovdata.no/all/nl-20030704-083.html>

The working group agrees that Norwegian authorities should wait until an actual application has been received before initiating the selection procedure/qualifying procedure for administration of a gTLD of national importance. Refer to the working group's conclusion in the main discussion, that Norwegian authorities should not "chase the market".

The working group has considered alternative selection methods based on the assumption that a real application for administration of a new gTLD of national importance will be received.

8.1 Chronological priority

Chronological priority is defined in this context as follows: the interested party that sends the first application is given the opportunity to enter into negotiations with the authorities on documentation of support or non-objection for the administration of a new gTLD of national importance, i.e. a first come first served procedure for selecting a registry. This procedure will not have major administrative consequences prior to the selection since no announcement is made.

The processes in ICANN are complex and not very well known in the electronic communications market. The chronological priority will give an invidious competitive advantage to the players that have already been informed about ICANN's procedures or who take part in ICANN and have the opportunity to prepare an application at an early stage. The working group believes it is important to establish a selection method in which more players are given a real opportunity to take part in the competition for the administration of this type of resource. Selection by chronological priority does not necessarily mean that the desired type of registry in relation to type of business, innovation etc. will be selected.

8.2 Auction

An auction in this context means that, upon receipt of an application from one or more interested parties in the market, the authorities carry out a bidding process, where interested parties are invited to make an offer for the management and administration of a specific gTLD resource. Parallels can be drawn here to auctions that are held in order to ensure the objective, transparent and non-discriminatory assignment of radio frequencies in the Norwegian market. Auctions are intended to ensure that the company/business that obtains access to a public resource pays an amount to the public purse that reflects the value of the resource. An auction requires prior announcement and administrative support, which will incur costs.

The working group believes that there are not enough interested parties in the current market to initiate an auction, but this may change as the gTLD market develops. However, the working group notes that both the GAC and ccNSO have approached ICANN with a view to reducing its fees and processing charges for implementing new gTLDs. The intention of this is to enable the introduction of gTLDs based on criteria other than commercial activity, for

example, cultural value for local/national authorities. Norwegian authorities should follow this up with selection procedures in which non-financial factors are also emphasised.

One key component that makes an auction unsuitable as a selection method for the administration of new gTLDs of national importance emerges from the introductory report on the difference in the administration regimes of ccTLDs and gTLDs. The ccTLDs are administered in accordance with national/local regulations, while the gTLDs are administered in accordance with an agreement between ICANN and the individual registry. With regard to gTLDs of national importance, national authorities have the right of veto as regards implementation, but authorities cannot guarantee or estimate total costs of implementation. The total cost will only be known after negotiations have been held between the registry and ICANN. This means that setting a value for this type of public resource would be extremely difficult and unsuitable for an auction.

8.3 Beauty contest

Beauty contest in this context is where the authorities make an open announcement to the market or to a more restricted group of relevant interested parties/registries. Players are invited to submit an application for negotiations with Norwegian authorities for documentation of support or non-objection for the administration of a new gTLD. A deadline is set for participation in the contest and all applications are treated equally and in accordance with good procurement and business practices.

In the beauty contest, interested parties may be invited to report on their own business, ideas and concepts in relation to the future operation of a new gTLD etc. The contest also gives the authorities the opportunity to set more or less detailed requirements in the announcement (tender documentation). The beauty contest is a qualifying round for further negotiations.

What requirements will be set for the registries when a beauty contest is announced, and what requirements may be negotiated in the subsequent documentation of support or non-objection procedure must be considered in relation to the relevant gTLD. The working group has identified certain conditions that must be met by every player/registry in order to administer a gTLD of national importance, see chapter 9 on support or non-objection.

8.4 Recommendation – selection method

The working group emphasises that irrespective of which selection method is chosen, the provision on authorisation of use in the Electronic Communications Act must be upheld.

The working group believes that the best method for selecting relevant registries for new gTLDs of national importance will be a beauty contest. This selection method will be announced openly in the market and will prevent players that have already been informed of ICANN's procedures or that take part in ICANN from gaining an invidious competitive

advantage. A beauty contest is also a suitable method for the authorities to “filter” players and streamline the subsequent negotiations on documentation of support or non-objection.

9 Procedure for support or non-objection

After the beauty contest, the working group recommends that more extensive negotiations on documentation of support or non-objection for the relevant gTLD are held. The extent of these negotiations will depend on the terms that the Authority puts forward, which gTLD is sought, what the gTLD will be used for (commercial activity/public causes/a mixture of the two) and which player is involved in the negotiations (major/strong financial resources/small/non-commercial).

The working group recommends that, as previously indicated, Norwegian authorities' documentation of support or non-objection for the administration of a gTLD of national importance follows the principle of the model in optional 2 in the Sample Letter of Government Support, as quoted in chapter 7 of the report.

Thus, a more accurate description than support or non-objection would be a Letter of Government Support, under the assumption of terms in an underlying agreement between the authorities and the registry.

AG, section 2.2.1.4.3, Documentation Requirements, gives some indication of the content of a Letter of Government Support.

"The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.)"

A sample letter of support is available as an attachment to this module. It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant"

There is no obligation under AG to provide ICANN with a copy of the underlying agreement. This will be up to national authorities and the registry to consider. However, the working group believes that transparency and predictability are beneficial in a three-way relationship between authorities, the registry and ICANN, and that the terms of the agreement should therefore be made available to ICANN.

The working group has discussed and identified some key components that we believe are important for the authorities to set requirements for and regulate in an agreement with the registry of a new gTLD of national importance.

9.1 Legal venue and regulation

A provision must be included in the agreement stipulating that the agreement shall be interpreted and disputes shall be resolved in Norway according to Norwegian law.

A review and evaluation must be made of which national laws and regulations the authorities consider to be applicable, or ought to be applicable to the administration of the relevant gTLD. In particular, this applies to the Electronic Communications Act and the Domain Regulation, privacy legislation and consumer legislation. Where it is found that Norwegian regulation will not be directly applicable with regard to the administration of a new gTLD, consideration should be given to the extent to which key elements in national regulations should be included in the agreement between the registry and the authorities. As already indicated, the terms that ICANN wants to include in its own agreement with the registry may not concur with Norwegian legislation in some areas. It will then be a question of whether the authorities can provide documentation of support or non-objection despite deviations between Norwegian regulations and ICANN's requirements, for instance, by utilizing exemption clauses in the relevant regulations.

9.2 Legal entity status

A requirement should be set for the registry that is to administer the relevant gTLD of national importance to be a legal entity in Norway, whereby the registry is accountable under Norwegian law.

9.3 Company merger or disposal of business

In relation to the aforementioned requirement for choice of law and legal entity status in Norway etc., it is important that the authorities set requirements for how the management of the relevant gTLD will be handled if the registry is sold or merges with another company.

9.4 Financial strength

As stipulated in section 6.4.2 of the report concerning the market situation and costs, the working group believes there will be a financial risk attached to the introduction and administration of a new gTLD of national importance. It may take a relatively long time to launch the domain and develop the market, and it would be unfortunate if this type of public resource is launched and subsequently disappears after a short period of time due to financial problems. A requirement should therefore be set for the relevant registry to have a degree of financial strength and stability before the authorities provide support for administration.

9.5 Minimum phasing out period and notice of termination

It is important to ensure that registrants of the new gTLD have predictability in relation to what will happen if the new gTLD has to be terminated as a result of, for instance, a decline in the market, the registry going bankrupt etc. The agreement between the registry and the authorities and the agreement between the registry and the domain registrants should therefore include a provision for a minimum phasing out period and a minimum notice period so that registrants have sufficient time to transfer the activity in the domain, such as registering a new domain under another TLD.

9.6 Post-delegation/re-delegation

Refer to the discussions under section 7.3 on post-delegation /re-delegation. The authorities must have a clear provision in the agreement with the registry on re-delegation in the event of a breach in the authorities' terms on documentation of support or non-objection.

10 Relevant authority for support or non-objection

Section 2.2.1.4.3 of AG gives details of who in the national authorities may provide documentation of support or non-objection and what information this should include.

Documentation Requirements

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant Governmental Advisory Committee (GAC) representative. The letter must clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and intended use. The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.) A sample letter of support is available as an attachment to this module. It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.

Which national authority can provide documentation of support or non-objection must be determined at a national level. The working group believes that the correct authority in Norway for application of support or non-objection for gTLDs of national importance must be the highest national authority in the domain area. Thus, the Ministry of Transport and Communications should write directly to ICANN stating that any future documentation of support or non-objection must emanate from the Ministry of Transport and Communications.

Notwithstanding, the working group believes that national authorities in the form of the Ministry of Transport of Communications should be the highest decision-making authority in relation to the introduction of gTLDs of national importance. Introduction of this type of gTLD will be fundamentally significant to the use of Norwegian city/town names and county names, and should always be considered at a national level.

Provided that national authorities have not reached a decision to reject applications on this type of gTLD, the working group believes that it will be appropriate to involve the relevant city/town/municipality and county authority where an actual application has been received for use of a city/town name or county name. Local authorities are likely to have points of view and suggestions with regard to the use of the city/town name or county name as a gTLD. The local authorities may also want to be involved in any administration/management of this type of gTLD, ref. France, where the local authority plans to be directly involved in the

management of .paris. The working group envisages a need for a large degree of information/guidance by the relevant municipality. The working group will leave it to the Ministry of Transport and Communications to consider whether the contact with local authorities should be aimed at administrative and/or political management and if other departments and public bodies or interest groups should be contacted (e.g. the Norwegian Association of Local and Regional Authorities (KS)).

11 Management model for gTLDs of national importance

The working group believes that the current method for assigning domain names under the national ccTLD .no works well. Refer here to the report “.no eller aldri...” on setting up the management model for .no. It could be argued that new gTLDs of national importance can be perceived just as much as a national resource in the market as .no, cf. the argument by the Consumer Council of Norway on the risk of confusion by consumers. On the basis of this point of view, it can in turn be argued that attempts should be made to establish a management model for new gTLDs of national importance that is as similar as possible to that established for the Norwegian ccTLDs.

The framework conditions for management and administration of legislation and regulations, cf. Section 7-1 of the Electronic Communications Act and Section 10-1 of the Domain Regulation, are applicable to the Norwegian ccTLDs and Norid’s management of .no. This form of regulation has been selected in Norway rather than entering into specific agreements with Norid as the registry. This was a conscious decision since an agreement alone would regulate Norid’s activity but not secure general rules for each registry.

As can be seen in the TLD model that new gTLDs of national importance are placed under, setting framework conditions and clarifying roles between national authorities, registries and ICANN is complicated, and is more unpredictable for gTLDs of national importance. The framework conditions for new gTLDs must be regulated in the agreement with the individual registry.

Since Norwegian regulations in the area are overarching regulations that determine fundamental principles for administration of this type of public resource, the working group believes that the Domain Regulation should be amended so that it can be transferred to new gTLD resources of national importance. Thus, the Domain Regulation will then set frameworks for the authorities’ negotiations with relevant registries. If the Domain Regulation regulates gTLDs of national importance, this can also put pressure on ICANN in relation to taking into account national regulation in the agreement with the registry, cf. ICANN’s Articles of Incorporation, article 4:

“The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law”.

Whether it will eventually be possible to effect all framework conditions that are set in national regulations, and which consequences there should be if they are not fully effected, would have to be considered in relation to ICANN’s requirements for the registry.

11.1 Proposed amendments to the Domain Regulation

The proposed amendments to the Domain Regulation are marked in italics. In order to present a clear picture, the entire Domain Regulation is quoted below, even where no changes have been suggested.

Regulation on domain names under Norwegian country code top level domains *or other top level domains of national importance* (The Domain Regulation).

Section 1 Purpose

The purpose of this Regulation is to lay down a public law framework for entities which assign domain names under Norwegian country code top level domains *or other top level domains of national importance*.

Section 2 Definitions

In this Regulation the following definitions apply:

- a) country code top level domain: the highest domain in the hierarchy of the global domain name system in accordance with the 2-letter codes under the ISO 3166-1 standard.

New point b:

- b) *top level domains of national importance: geographic gTLDs where Norwegian authorities are given the right of veto in relation to implementation in DNS.*
- c) registry: any entity which by agreement with the international administrator of top level domains is entitled to assign domain names under Norwegian country code top level domain *or top level domains of national importance*,
- d) registrar: an entity which has entered into an agreement with a registry concerning the right to submit applications and notifications of amendments to the registry on behalf of applications for/holders of domain names under Norwegian country code top level domains *or top level domains of national importance*,
- e) Domain Dispute Resolution Board: an alternative dispute resolution board for domain names under Norwegian country code top level domains *or top level domains of national importance*,
- f) registration data: data about the applicant and the applicant's entity which is required in connection with applications and amendment notifications.

Section 3 Rules on the assignment of domain names

Each Norwegian country code top level domain *or top level domain of national importance* shall be administered by a single registry which shall lay down rules for the assignment of domain names (domain name policy) ~~for the respective country code top level domain~~. The registry shall not exercise public administrative authority, and assignments shall take place in accordance with private law rules.

The assignment rules shall be publicly available and, as a minimum, be designed in such a way that they:

- a) ensure cost effectiveness,
- b) ensure high technical quality,
- c) are non-discriminatory,
- d) are transparent,
- e) promote predictability,
- f) promote the interests of Internet users, individually and collectively, and
- g) promote national interests and take into account the international development in the Internet area.

Before the adoption of or any significant amendment of the assignment rules opinions shall be sought from the users' representatives and the authorities. The Norwegian Post and Telecommunications Authority shall be informed of all amendments.

Section 4 Personal statement

The registry shall require applicants for registration of domain names under Norwegian country code top level domains *or top level domains of national importance* to submit a personal statement containing the applicant's confirmation that the registration and/or use of the domain name to be registered:

- a) are not contrary to the assignment rules (cf. Section 3),
- b) are not contrary to Norwegian law,
- c) do not conflict with the rights of third parties,
- d) do not give the unjustified impression that it concerns public administration or the exercise of authority.

The registry shall ensure that in the personal declaration the applicant agrees that:

- a) disputes shall be able to be heard by a domain Dispute Resolution Board, and that
- b) the registry shall be able to withdraw a domain name which has been assigned when it is clear that the assignment is contrary to the first paragraph.

The contract between the registry and the applicant shall include provisions which restrict the registry's use of registration data in connection with the registration and maintenance of domain names.

Section 5 Registrars

The registry shall delegate parts of the registration process, including forwarding applications and notifications of amendments on behalf of applicants for and holders of domain names, to registrars, and shall promote competition between these by giving the same terms and conditions to all registrars.

Section 6 Back-up copies

The registry shall ensure that there are necessary back-up copies of all registration data. The back-up copies shall be handled in a secure way so that users do not suffer unnecessary harm.

Section 7 Procedures for the Domain Dispute Resolution Board

The registry is obliged to establish a domain dispute resolution board. *If there are several registries, the existing domain dispute resolution board shall be used. ~~If there are several registries, they shall set up a joint dispute resolution board.~~*

The Domain Dispute Resolution Board shall be given authority to hear complaints:

- a) from applicants against the registry's decisions,
- b) from domain name holders towards the registry's decisions,
- c) from registries that names have been registered in conflict with the personal declaration (cf. Section 4, first paragraph),
- d) from third parties (cf. Section 4, first paragraph, letter c),
- e) from public bodies (cf. Section 4, first paragraph, letter d), and
- f) from the Norwegian Post and Telecommunications Authority that domain names have been registered in conflict with this Regulation.

The Domain Dispute Resolution Board shall have the opportunity to reject a complaint in accordance with rules that are further specified.

The registry is obliged to comply immediately with the Domain Dispute Resolution Board's decisions.

The registry shall ensure that the domain name cannot be transferred if mediation has been requested or while the case is pending with the domain Domain Dispute Resolution Board.

The registry may finance the domain Domain Dispute Resolution Board through an increase in the registration fee along with user fees paid by the appellant/complainant *and/or reimbursement from the loser of the dispute.*

The registry shall issue procedures for the Domain Dispute Resolution Board in accordance with the principles in this Regulation.

The registry shall seek opinions from the users' representatives and the authorities before the adoption or any significant amendment of the procedures and before the members of the board are appointed. The Post and Telecommunications Authority shall be informed of all amendments.

The Domain Dispute Resolution Board's decisions shall be public with the exception of information relating to technical devices and procedures, as well as operational or business matters which for competition reasons it is important to keep secret in the interests of the person whom the information concerns.

The Domain Dispute Resolution Board shall hear disputes related to domain names that are registered after this Regulation has entered into force.

Section 8 Time limit for complaints

Complaints under Section 7, second paragraph, letters a and b, must be submitted within a month after the applicant or domain name holder was notified of the registry's decision. Other complaints under Section 7, second paragraph, must be submitted no later than 3 years after the registration of the domain name.

Section 9 Supervision and control

The Norwegian Post and Telecommunications Authority shall monitor compliance with the provisions of this Regulation (cf. Section 10-1 of the Electronic Communications Act).

If a registry fails to fulfil the requirements in this Regulation, the Norwegian Post and Telecommunications Authority may order the unlawful activity to cease, or the entity to be terminated, within a set time limit (cf. Section 10-6 of the Electronic Communications Act).

Section 10 Liquidation

In the event of the liquidation of its operations, the registries shall make arrangements to allow the registration activities to continue as before if possible.

New second paragraph:

The registry *for the country code top level domains* shall ensure that all registration data is transferred to a new registry which fulfils the Regulation's requirements. If at the time of liquidation there is no entity that fulfils the Regulation's requirements, the Norwegian Post and Telecommunications Authority itself shall take over the registry's tasks until a new registry has been established.

New third paragraph:

The Norwegian Post and Telecommunications Authority may itself decide whether the registration of *country code top level domain* activities in the interim period shall be conducted in accordance with the liquidated registry's assignment rules (cf. Section 3) and rules on dispute resolution bodies (cf. Section 7), or whether new rules shall be established. In the interim period the Norwegian Post and Telecommunications Authority shall be bound by this Regulation to the extent applicable.

Section 11 Dispensation

The Norwegian Post and Telecommunications Authority may grant exemptions from provisions in this Regulation when special reasons justify it.

Section 12 Sanctions

The Norwegian Post and Telecommunications Authority may impose coercive fines in accordance with Section 10-7 of the Electronic Communications Act.

Breaches of the Regulation may be punished in accordance with to Section 12-4 of the Electronic Communications Act.

Section 13 Entry into force

This Regulation shall enter into force 1 October 2003.

11.2 Comments on amendments to Domain Regulation

Title

Changed to include top level domains of national importance.

Section 1 Purpose

Changed to include top level domains of national importance.

Section 2 Definitions

New point b) added, with a definition of top level domains of national importance.

Points c), d) and e) changed to include top level domains of national importance.

Section 3 Rules on the assignment of domain names

Changed to include top level domains of national importance.

Technical change from *and* to *of* in the last paragraph.

Section 4 Personal statement

Changed to include top level domains of national importance.

Section 5 Registrars

No changes are proposed. It must be noted that in AG, ICANN no longer sets requirements for a distinction between a registry and registrar. However, it has proposed rules and safety mechanisms in order to prevent exploitation of such a position with the domain registrants.

Section 6 Back-up copies

No changes are proposed. The agreement between ICANN and a registry includes a requirement for the storage of back-up copies of registration data. The purpose of this is to safeguard the domain registrants against loss of registration data in the event of the registry going bankrupt, for instance. Whether this contravenes Norwegian privacy legislation depends on how the requirement for back-up copies is formulated in the agreement.

Section 7 Procedures for the Domain Dispute Resolution Board

It is proposed that the existing domain dispute resolution board is also used for new gTLDs of national importance. The working group does not believe it is practical to have several parallel dispute resolution boards within the domain field. If several registries are to use the existing domain dispute resolution board, Norid can no longer run the secretariat alone. A cooperation must therefore be established between the registries. In the event that several registries are to use the domain dispute resolution board, the board's mandate must be reviewed.

Section 10 Liquidation

It is proposed that only the first point in the first paragraph of the existing provision is changed to also include registries for gTLDs of national importance. It is not considered to be desirable for a responsibility to be imposed on national authorities for the future management of a gTLD that is to be implemented in DNS on the basis of a private initiative. The domain registrants' interests in relation to predictability will be regarded as sufficiently protected if clear requirements are set for a phasing out period and duty to give notice in the agreement between authorities and the registry, cf. chapter 9.

12 Administrative and financial consequences

The measures proposed by the working group will have financial and administrative consequences, but it is difficult to estimate these precisely. The work in ICANN to lay down all the details in the gTLD process is not yet complete. Changes may still be made, and new elements may be added that affect the authorities' activities in relation to the introduction of new gTLDs. The estimates given below are therefore not definitive.

Should the Ministry of Transport and Communications decide not to allow any new gTLDs of national importance, the use of resources in administration and to business will obviously remain the same, and no amendments will be required to the Domain Regulation.

12.1 Administrative and financial consequences of implementation

Should the Ministry of Transport and Communications decide to permit new gTLDs of national importance to be established, this will result in certain financial and administrative consequences.

12.1.1 Consequences for the administration

Conducting a beauty contest would entail the following for the Ministry of Transport and Communications and the Norwegian Post and Telecommunications Authority:

- Preparation of tender documentation, including a detailed description of terms
- Evaluation of applications received
- Negotiations with relevant candidate for a new top level domain
- Drawing up a contract/agreement with a new registry

Legal assistance and other assistance to the state with drawing up a contract/agreement with new registries will incur one-off costs. This also applies to preparing the tender documentation. Negotiations with a new registry may thus incur costs for the Ministry/NPT that are likely to require increased budget limits.

Execution of the above activities will mean a greater workload during the selection and assignment period. The working group assumes that the actual work carried out by the Ministry/NPT will be undertaken within the existing budget. In the event that a large number of applications are received for different top level domains, consideration may need to be given to creating a new post in NPT. It should also be noted that more regulatory work will need to be undertaken if several new gTLDs of national importance are introduced.

The cost of increased staffing costs in NPT may be covered by amending Regulation no. 168 of 21 February 2005 relating to administrative charges payable to the Norwegian Post and

Telecommunications Authority to include a provision for charging market players a fee.⁶⁰ Actual implementation of the changes to the Domain Regulation and Regulation no. 168 is not considered to entail any significant administrative or financial costs.

12.1.2 Consequences for businesses

The execution of a beauty contest and subsequent negotiations on the documentation of support or non-objection may incur a one-off charge in accordance with the Electronic Communications Act, Section 12-2, cf. Odelsting Proposition no. 58 (2002-2003 page 129) for the registry that is granted access to this limited domain name resource. However, the working group does not expect the said charge to be set particularly high since the registry may also have to pay a high fee to ICANN when applying for a new gTLD.

Should the introduction of new gTLDs of national importance be permitted, costs may also be incurred by the Norwegian business community and trademark owners as a result of defensive registration, which is discussed in chapters 5 and 6.

12.1.3 Consequences for the population/users

The working group has discussed whether the introduction of new gTLDs of national importance could create consumer confusion. Since the working group does not envisage many gTLDs of national importance being established in Norway, we do not expect this to be a major problem.

12.2 Proposal for dispute resolution model

The working group's proposal for the recommended dispute resolution model will barely increase the administrative or financial consequences. The proposal facilitates the use of the current Domain Dispute Resolution Board (DOK), with the addition of any extra resources needed due to the division of expertise and a larger caseload, where applicable. DOK is currently user financed through the payment of dispute resolution fees that are four times the court fee.

Using DOK is likely to incur lower costs for the parties than going through the judicial system. The working group's proposal will thus have positive consequences for the market players involved in a dispute relating to domain registrations under a new gTLD of national importance.

⁶⁰ <http://www.lovddata.no/for/sf/sd/sd-20050221-0168.html>

12.3 Other major consequences – data protection

Domain registrations under .no are subject to Norwegian law. This is referred to in the exchange of letters between ICANN and Norid. In order to limit/prevent misuse of personal data, Norid has restricted the data that is shared through its WHOIS service. Only Norid has access to the complete database. No data is transferred to other parties or ICANN.

Establishing new gTLDs of national importance may have a bearing on the processing of personal data. The registry for a new gTLD will enter into a register agreement with ICANN in which the registry has an obligation to safely store all registration data with a data processing agent (escrow agent). Collection, storage, forwarding and publishing of any personal data may contravene the Personal Data Act (Norway). However, recent developments indicate that ICANN is moving towards permitting agreement terms that are more in line with European legislation on personal data. One such example is the contract changes that were recently made in the register agreement for .com between ICANN and VeriSign.

13 Nordic experience

NPT and Norid's international involvement in the domain field includes participation in annual Nordic domain seminars that are held in the Nordic countries on a rotation basis. The last meeting was held on 28 September 2010 in Copenhagen. Denmark, Sweden, Norway, Finland, Iceland and Greenland were all represented. Representatives from regulatory authorities and the registries for the Nordic ccTLDs participated in the meeting.

The aim of the seminar is to exchange Nordic experiences and provide updates on national policy, legal developments and projects of interest within the Nordic region. Discussions are also held on how the Nordic countries can influence the international development in the domain field.

At the Copenhagen meeting, Norway gave details of the initiative by the Ministry of Transport and Communications to appoint a national working group for new gTLDs, and experiences from the work to date. The discussion on this topic generated useful information for the Norwegian participants with regard to the other Nordic countries' positions on this type of work at a national level.

The Danish authorities, represented by the National IT and Telecom Agency, informed the meeting that they plan to appoint a forum consisting of representatives from various authorities and public interests in order to carry out a review of these types of problems.

The Swedish authorities, represented by the Swedish Post and Telecom Agency, informed the meeting that Swedish authorities have established an external reference group⁶¹ to discuss and review the issue of Internet governance. The reference group is made up of representatives from the authorities, private players, members of the business community, academia/university and the registry .se, and meets three times a year in order to discuss both national and international Internet governance. Sweden has focused on challenges relating to IDN since the Jewish script Yiddish is an official language in Sweden, and Sweden can therefore establish an IDN ccTLD according to the new domain regime.

⁶¹ Reference Group for Internet Governance (RGIG)

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2.2.1.4 Geographic Names Review

Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names. The requirements and procedure ICANN will follow in the evaluation process are described in the following paragraphs. Applicants should review these requirements even if they do not believe their intended gTLD string is a geographic name. All applied-for gTLD strings will be reviewed according to the requirements in this section, regardless of whether the application indicates it is for a geographic name.

2.2.1.4.1 Treatment of Country or Territory Names⁶

Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program in this application round. A string shall be considered to be a country or territory name if:

- i. it is an alpha-3 code listed in the ISO 3166-1 standard.
- ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.
- iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.
- iv. it is the short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.
- v. it is a separable component of a country name designated on the “Separable Country Names List,” or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.
- vi. It is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces,

⁶ Country and territory names are excluded from the process based on advice from the Governmental Advisory Committee in recent communiqués providing interpretation of Principle 2.2 of the GAC Principles regarding New gTLDs to indicate that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccPDP, and other geographic strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

insertion of punctuation, and addition or removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”

2.2.1.4.2 *Geographic Names Requiring Government Support*

The following types of applied-for strings are considered geographic names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

1. An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard.

In this case, it is anticipated that the relevant government or public authority would be at the national level.

2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

City names present challenges because city names may also be generic terms or brand names, and in many cases no city name is unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.

An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:

- (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and

- (b) The applied-for string is a city name as listed on official city documents.⁷

In the case of an application that meets conditions (a) and (b), documentation of support will be required only from the relevant government or public authority of the city named in the application.

3. An application for any string that is an exact match of a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.

In this case, it is anticipated that the relevant government or public authority would be at the sub-national level, such as a state, provincial or local government or authority.

4. An application for a string listed as a UNESCO region⁸ or appearing on the "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" list.⁹

In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.

Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the "composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" takes precedence.

An applied-for gTLD string that falls into any of 1 through 4 listed above is considered to represent a geographic name. In the event of any doubt, it is in the applicant's interest to consult with relevant governments and public

⁷ City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

⁸ See <http://www.unesco.org/new/en/unesco/worldwide/>.

⁹ See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.

In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

- identify whether its applied-for gTLD string falls into any of the above categories; and
- determine the relevant governments or public authorities; and
- identify which level of government support is required.

The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to subsection 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community.

2.2.1.4.3 Documentation Requirements

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant Governmental Advisory Committee (GAC) representative.¹⁰

¹⁰ See <http://gac.icann.org/gac-members>

The letter must clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and intended use.

The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.)

A sample letter of support is available as an attachment to this module.

It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.¹¹

2.2.1.4.4 Review Procedure for Geographic Names

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic name, and verify the relevance and authenticity of the supporting documentation where necessary.

The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the application will not pass the Geographic Names review and will be denied. No additional reviews will be available.

For any application where the GNP determines that the applied-for gTLD string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from

¹¹ It is also possible that a government may withdraw its support for an application at a later time, including after the new gTLD has been delegated, if registry operator has deviated from the conditions of original support or non-objection.

Attachment to Module 2

Sample Letter of Government Support

[This letter should be provided on official letterhead]

ICANN
Suite 330, 4676 Admiralty Way
Marina del Rey, CA 90292

Attention: New gTLD Evaluation Process

Subject: Letter for support for [TLD requested]

This letter is to confirm that [government entity] fully supports the application for [TLD] submitted to ICANN by [applicant] in the New gTLD Program. As the [Minister/Secretary/position] I confirm that I have the authority of the [x government/public authority] to be writing to you on this matter. [Explanation of government entity, relevant department, division, office, or agency, and what its functions and responsibilities are]

The gTLD will be used to [explain your understanding of how the name will be used by the applicant. This could include policies developed regarding who can register a name, pricing regime and management structures.] [Government/public authority/department] has worked closely with the applicant in the development of this proposal.

The [x government/public authority] supports this application, and in doing so, understands that in the event that the application is successful, [applicant] will be required to enter into a Registry Agreement with ICANN. In doing so, they will be required to pay fees to ICANN and comply with consensus policies developed through the ICANN multi-stakeholder policy processes.

[Government / public authority] further understands that the Registry Agreement provides that, in the event of a dispute between [government/public authority] and the applicant, ICANN may implement the order of any court sitting in such jurisdiction in favor of such governmental entity related to the TLD.

[Optional] This application is being submitted as a community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the application. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.

[Optional] I can advise that in the event that this application is successful [xx government/public authority] will enter into a separate agreement with the applicant. This agreement will outline the conditions under which we support them in the operation of the TLD, and circumstances

Appendix 2 - Sample letter from Applicant Guidebook - Letter of Government Support

under which we would withdraw that support. ICANN will not be a party to this agreement, and enforcement of this agreement lies fully with [government/public authority].

[Government / public authority] understands that the Geographic Names Panel engaged by ICANN will, among other things, conduct due diligence on the authenticity of this documentation. I would request that if additional information is required during this process, that [name and contact details] be contacted in the first instance.

Thank you for the opportunity to support this application.

Yours sincerely

Signature from relevant government/public authority

GAC PRINCIPLES REGARDING NEW gTLDs

Presented by the Governmental Advisory Committee
March 28, 2007

1. Preamble

- 1.1 The purpose of this document is to identify a set of general public policy principles related to the introduction, delegation and operation of new generic top level domains (gTLDs). They are intended to inform the ICANN Board of the views of the GAC regarding public policy issues concerning new gTLDs and to respond to the provisions of the World Summit on the Information Society (WSIS) process, in particular “*the need for further development of, and strengthened cooperation among, stakeholders for public policies for generic top-level domains (gTLDs)*”¹ and those related to the management of Internet resources and enunciated in the Geneva and Tunis phases of the WSIS.
- 1.2 These principles shall not prejudice the application of the principle of national sovereignty. The GAC has previously adopted the general principle that the Internet naming system is a public resource in the sense that its functions must be administered in the public or common interest. The WSIS Declaration of December 2003 also states that “*policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues.*”²
- 1.3 A gTLD is a top level domain which is not based on the ISO 3166 two-letter country code list³. For the purposes and scope of this document, new gTLDs are defined as any gTLDs added to the Top Level Domain name space after the date of the adoption of these principles by the GAC.
- 1.4 In setting out the following principles, the GAC recalls ICANN’s stated core values as set out in its by-laws:

- a. *Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.*
- b. *Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.*
- c. *To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.*

¹ See paragraph 64 of the WSIS Tunis Agenda, at <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html>

² See paragraph 49.a) of the WSIS Geneva declaration at

<http://www.itu.int/wsis/docs/geneva/official/dop.html>

³ See: <http://www.icann.org/general/glossary.htm#G>

Appendix 3 - GAC Principles Regarding New gTLDs

d. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

e. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.

f. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

g. 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.

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

i. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.

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

k. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

2. Public Policy Aspects related to new gTLDs

When considering the introduction, delegation and operation of new gTLDs, the following public policy principles need to be respected:

Introduction of new gTLDs

2.1 New gTLDs should respect:

a) The provisions of the Universal Declaration of Human Rights⁴ which seek to affirm "*fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women*".

b) The sensitivities regarding terms with national, cultural, geographic and religious significance.

2.2 ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.

⁴ See <http://www.un.org/Overview/rights.html>

Appendix 3 - GAC Principles Regarding New gTLDs

- 2.3 The process for introducing new gTLDs must make proper allowance for prior third party rights, in particular trademark rights as well as rights in the names and acronyms of inter-governmental organizations (IGOs).
- 2.4 In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains no two letter gTLDs should be introduced.

Delegation of new gTLDs

- 2.5 The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.
- 2.6 It is important that the selection process for new gTLDs ensures the security, reliability, global interoperability and stability of the Domain Name System (DNS) and promotes competition, consumer choice, geographical and service-provider diversity.
- 2.7 Applicant registries for new gTLDs should pledge to:
 - a) Adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD.
 - b) Ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.
- 2.8 Applicants should publicly document any support they claim to enjoy from specific communities.
- 2.9 Applicants should identify how they will limit the need for defensive registrations and minimise cyber-squatting that can result from bad-faith registrations and other abuses of the registration system

Operation of new gTLDs

- 2.10 A new gTLD operator/registry should undertake to implement practices that ensure an appropriate level of security and stability both for the TLD itself and for the DNS as a whole, including the development of best practices to ensure the accuracy, integrity and validity of registry information.
- 2.11 ICANN and a new gTLD operator/registry should establish clear continuity plans for maintaining the resolution of names in the DNS in the event of registry failure.

Appendix 3 - GAC Principles Regarding New gTLDs

These plans should be established in coordination with any contingency measures adopted for ICANN as a whole.

- 2.12 ICANN should continue to ensure that registrants and registrars in new gTLDs have access to an independent appeals process in relation to registry decisions related to pricing changes, renewal procedures, service levels, or the unilateral and significant change of contract conditions.
- 2.13 ICANN should ensure that any material changes to the new gTLD operations, policies or contract obligations be made in an open and transparent manner allowing for adequate public comment.
- 2.14 The GAC WHOIS principles are relevant to new gTLDs.

3. Implementation of these Public Policy Principles

- 3.1 The GAC recalls Article XI, section 2, no. 1 h) of the ICANN Bylaws, which state that the ICANN Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues. Insofar, therefore, as these principles provide guidance on GAC views on the implementation of new gTLDs, they are not intended to substitute for the normal requirement for the ICANN Board to notify the GAC of any proposals for new gTLDs which raise public policy issues.
- 3.2 ICANN should consult the GAC, as appropriate, regarding any questions pertaining to the interpretation of these principles.
- 3.3 If individual GAC members or other governments express formal concerns about any issues related to new gTLDs, the ICANN Board should fully consider those concerns and clearly explain how it will address them.
- 3.4 The evaluation procedures and criteria for introduction, delegation and operation of new TLDs should be developed and implemented with the participation of all stakeholders.

N.B. The public policy priorities for GAC members in relation to the introduction of Internationalised Domain Name TLDs (IDN TLDs) will be addressed separately by the GAC.

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