

DOCUMENT FOR ccTLD WORKSHOP

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Administration model and alternative dispute resolution under Norwegian domain name administration

Report from the working group established in March 2002

In February 2001 the assignment rules for domain names under the Norwegian country code top level domain *.no* were liberalised. As part of this liberalisation a phase 2 should be accomplished through a further evaluation of following issues:

- the administration of the *.no*-domain,
- the need for a dispute resolution system concerning the right of domain names,
- the withdrawal of assigned domain names and
- appropriate measures to restrict domain piracy.

In May 2001 the Ministry of Transport and Communications established a working group (hereafter called WG) to evaluate these questions. The WG handed over a report in March 2002 where they evaluate all these questions, with the exception of measures to restrict domain piracy. This question should be considered later. It was the opinion of the WG that some of the initiatives covered already would reduce the domain piracy considerably. The WG also presented a proposal for domain regulations.

The report and the regulations were sent on public hearing in the summer of 2002. The Norwegian Post and Telecommunications Authority (PT) summarised the answers of the hearing and presented its recommendations to the Ministry of Transport and Communications in a report on 23 October 2002. PT has also presented a revised draft regulation, based on the inputs from the hearing.

Below follows a short summary of the conclusions which so far may be extracted after PT's report was delivered to the Ministry, with reservations that changes may be made. These are only preliminary conclusions as the draft regulation has not yet been approved by the Government.

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Main conclusions of the report of 2002

The WG based their assessments on the principle that an overall objective must be that the country code top level domain *.no* should be the obvious choice for all Internet users resident in Norway. Furthermore it is important that the administration of the domain name takes care of the interest of the users. The assignment should among other things be fast, of high quality and have low costs.

These principles constituted the background for the WG's main conclusions:

Compared with the existing *administration model* the WG was of the opinion that the division of responsibility between the Norwegian registration unit Norid¹ and the public authorities needed clarification. The WG recommended that the *.no*-domain should be administered in such a way that the Ministry of Transport and Communications and PT is given the overall political and administrative responsibility, with the right and duty to propose and be in charge of the legal framework for the administration of the *.no* domain and other Norwegian country code top level domains. This proposal is complying with the GAC²-model for administration of country code top level domains. The WG recommended that the relationship between the authorities and the registration unit in Norway should be regulated in a general regulation, which establishes framework provisions for the administration of the Norwegian country code top level domains.

The WG also evaluated the existing *dispute resolution system* and concluded that it should be extended to include third-party disputes. The WG recommended that a domain dispute resolution board should be established, based on the existing dispute resolution body NOK³, but with an expanded authority to resolve third-party disputes. It is recommended that this system should be financed by a supplement to the registration fee and a fee payable by the complainant.

With regard to the possibility of *withdrawing unrightfully assigned domain names*, the WG recommended that the registration unit should be authorised to withdraw a domain name if it finds it obvious that an assignment is not in accordance with the assignment rules, Norwegian law, the rights of a third party, or if a domain name gives a wrong or incorrect impression that the holder is a public body.

Background

Domain names are individual names connected to and identified with thousands of unique IP addresses. IP addresses are unique addresses built up as long series of numbers designed to identify every single user (i.e. their equipment/computer) connected to the Internet, enabling the transference of the information sent over the Internet to reach the correct addressee. In the same way as the telephone system uses numbers to identify users, domain names are used to identify host machines on the Internet. Domain names are built up hierarchically, with the top-level domain appearing last (national/geographic or generic), preceded by second level and third level domains. For example, in www.odin.dep.no, *odin* is a third-level domain, *dep* a second level and *.no* the top

¹ NORID stands for the Norwegian Service for Internet Domain Name Registration. NORID is responsible for maintenance of *.no*, technically and administratively, and for processing applications and recording registrations.

² GAC (Governmental Advisory Committee) is an advisory committee for ICANN and consists of representatives from authorities in about 40 countries so far. The Committee has drawn up a set of guidelines for principles and delegation of national top level domains. For further information see:
<http://www.noie.gov.au/projects/international/DNS/gac/index.htm>

³ NOK = NORID's complaint board

level or country domain. Besides being “signposts” for Internet searches, domain names serve a distinguishing function.

As present, Norid is the registration unit, or ccTLD, administrating domains under *.no*. Norid is not an independent legal entity, but is part of a company, UNINETT FAS AS, which in turn is a subsidiary of UNINETT AS. UNINETT is state-owned by the Ministry of Education and Research, and has been authorised to assign domains under *.no* since 1987.

The authorisation to manage the *.no* domain was granted to UNINETT/Norid by IANA⁴. Originally, IANA was the superior international authority for the administration of the Internet. IANA has a contract with the US Government, Department of Commerce. With a view to internationalising responsibility for the administration of the Internet, the US Government in 1998 established the private, non-profit organisation ICANN⁵. It was intended that ICANN should gradually take over IANA’s duties, but ICANN has not yet done so. ICANN has not lived up to the expectations so far. Accordingly, ICANN is in the middle of a reorganisation process. In this process it is important that national authorities participate more in ICANN’s policy development.

Norid also derives its factual authority from ICANN which administrates the root servers⁶ leading the digital flow to the correct top level domains. An alteration in the registration unit demands that ICANN has to make a technical alteration in its domain name system. Therefore ICANN has factually and legally assigned Norid the authorisation to administer the *.no* domain. Hence Norid is organised under and conducts its operations by virtue of the rules of private law.

Domain names come under the provisions of the Telecommunication Act on the management of numbers, names and addresses for telecommunications networks and services⁷. As a result they also fall within the jurisdiction of the Ministry of Transport and Communications and PT. However, these authorities have not yet exercised their authority to determine and assign domain names. Therefore the authorities have no direct powers of instruction over Norid.

At present, Norid is managed in “understanding with PT”, meaning that Norid has voluntarily agreed to parts of its operations being subject to the consent of the Authority. This relationship between Norid and the authorities functions well.

The administration model

Recommendations

The present system for the administration of country code top level domain *.no* works extremely well and has many advantages. These should be allowed to continue. In particular this applies to the high efficiency of the scheme (e.g. quick procedures and high operation stability) where Norway is doing very well in an international context. The system is also highly regarded in the market and well established over more than 15 years.

⁴ IANA = The Internet Assigned Numbers Authority. For more information see: <http://www.iana.org>

⁵ ICANN = The Internet Corporation for Assigned Names and Numbers. ICANN has overriding responsibility for worldwide organisation and management of Internet names and addresses. More information is available at <http://www.icann.org>

⁶ Root servers are the highest servers in the hierarchy. They have a list of all top level domains and an IP number that indicates which servers handle which top level domains. There are a total of 13 root servers.

⁷ In the process of changing into the Electronic Communication Law.

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One of the weaknesses of the existing system is primarily that the division of responsibility between Norid and the public authorities seems rather indistinct. This is largely because the division of responsibility is not defined within present regulations or agreements.

The WG was of the view that it was necessary to clarify the respective areas of responsibility of Norid and the public authorities. At the same time it should be stressed that the public authorities have a right and a duty to set guidelines for the administration of *.no*. A certain degree of public control over the administration of domain names is necessary if the authorities are to formulate a comprehensive policy on ICT⁸-development. Furthermore, a clear framework for the assignment will facilitate among other things greater predictability for holders of and applicants for domain names.

The WG therefore recommended that the Ministry of Transport and Communications and PT should have an overall political and administrative responsibility for *.no* modelled after the so-called *GAC-model*. The GAC-model is a set of principles for the delegation of national country code top level domains. According to this model, responsibility for the assignment of country code top level domains should be communicated between national authorities and ICANN, between the registration unit and ICANN and between national authorities and the registration unit. This should take place by means of an agreement, a regulation or a statute. The WG recommended that the relationship between the authorities and the registration unit should be determined through a *general regulation* that lay down the framework conditions and principles for the administration of the Norwegian country code top level domains.

Preliminary conclusions after the hearing

The result of the public hearing shows that it is widely agreed that the future model suggested by the WG will enable continuation of the advantages of the existing model, e.g. by means of being efficient, not expensive and flexible. At the same time the division of responsibility between the authorities, the registration unit and ICANN will be clarified, by defining precisely the specific rights and duties for each party. Moreover, in order to comply with the request for international harmonisation, Norway should implement the GAC-principles, which both the European Commission and the Council have recommended. Anyway, Norway indirectly has joined the GAC-principles through its participation in the GAC.

Furthermore, the result of the hearing shows a general agreement on the need of a general regulation that applies to any registration unit who administrates Norwegian country code top level domains. Therefore, the regulations will include the administration of *.no*, *.sj* and *.bv*.

The regulations should be drawn up in such a way that it is clear that the registration unit does not exercise administrative authority on behalf of public authorities. To accomplish this, the regulation must have the character of framework conditions and may not describe rights or duties in detail. The regulation does not delegate public authority, and the rules of procedure of the Public Administration Act will therefore not be applicable to the activities of the registration unit. The Norwegian domain names will continue to be assigned by the registration unit according to rules of private law, based on delegation from ICANN/IANA. The relation between the registration unit and the applicant/holder of a domain name will be based on an agreement. The authorities secure themselves influence over the activities of the registration unit by imposing requirements to the activities. Accordingly, the authorities may intervene in case the registration unit does not follow the principles of the regulation.

⁸ ICT = Information and Communications Technology.

The organisation of the Norwegian registration unit

As regards to the organisation of today's registration unit, Norid, the investigations carried out by the WG revealed that most market operators are of the opinion that Norid's organisational connection to UNINETT/the Ministry of Education and Research (UFD) functions well. The WG did not see any need for this to be changed. A governmental connection, like the one UFD's ownership represents, will in addition ensure assistance from the authorities e.g. in the event of bankruptcy of the registration unit.

Nevertheless the WG was of the opinion that some adjustments should be made in the way Norid is organised. A main reason for this was to make clear to the public where the assignment authority for *.no* is situated. The WG suggested that Norid should split off as a separated limited liability company under UNINETT AS. There was a clear trend among the market operators that this would be an orderly solution. Norid is now working to accomplish this proposal and has started the legal process. (<http://www.norid.no/omnorid/nytt-as.html>)

The dispute resolution model

Recommendations

The assignment rules for domain names were changed in February 2001. The changes involved a considerable liberalisation with regard to the users' freedom of choice. In principle it is possible to apply for any domain name as long as all formal criteria are fulfilled. These criteria are primarily that the applicant may not have more than 15 domain names and that the domain name must not already be registered.

The liberalisation of the assignment rules has led to a greater risk for so-called third-party disputes, i.e. disputes between applicant/holder of a domain name and a third-party that claims infringement of his rights. Today's dispute resolution body, NOK, does not deal with disputes of this type. At this moment there are few third-party disputes seen in proportion to the number of assigned domain names. Most cases are solved by means of compromise, but some cases have been brought to court.

The WG reached the conclusion that there is need for a special dispute resolution body that also handles third-party disputes. Firstly, this solution is reasonable since Norid for the time being (potentially) may register domains which infringe a third-party right. Because no evaluation or consideration of the right to the domain name is finding place in advance, there should exist a simple system enabling third-parties to oppose registrations. Secondly, in this makes it possible to avoid an increase in cases brought to the already pressed courts. Thirdly, a special dispute resolution body would probably be perceived as more accessible than the ordinary courts. A legal court procedure can be more time-consuming and expensive for parties. Fourthly, the WG was of the opinion that it is important to consider the signals which indicate that the market misses an alternative or supplement to the courts with regard to solving third-party disputes.

The WG wants to emphasise the following considerations in choosing a dispute resolution body:

- The costs of a dispute resolution system, so that there is a certain proportion between the resources spent on the dispute resolution body and the low number of registered domain names that actually end in a conflict.
- A quick proceeding, so that the process between complaint and decision is fast.
- Consideration of legal protection.
- The dispute resolution body must have confidence among the users.

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- The interests of both parties should be taken into consideration.
- The principle of hearing both sides of a case.

The WG reached the conclusion that the best solution would be that today's dispute resolution body, NOK, expands its authority to include also third-party disputes. Especially the consideration to the fact that there should be a balance between the resources spent on the dispute resolution body and the low number of third-party disputes, justifies that there should not be established a whole new body if there already exists a suitable body which can be strengthened. NOK deals with complaints relating to the assignment of domain names and has established procedures for this. The new enlarged dispute resolution body is suggested to have the name "domain Dispute Resolution Board" (DRB).

Preliminary conclusions after the hearing

Taking into consideration the results of the hearing the following preliminary conclusions can be drawn:

- 1 The DRB should be able to deal with all kinds of third-party disputes, as well as complaints against decisions made by the registration unit in connection with the allocation or registration of domain names.
- 2 The DRB should be able to refuse complicated cases.
- 3 Applicants for and holders of domain names, third-parties who claim that the registration infringes their rights, the registration unit, public bodies and PT have the right to appeal to the DRB.
- 4 A voluntary mediation system should be established one step ahead of the complaints proceedings in the DRB. Members of the DRB should be able to act as a mediator, but this member will be incompetent if a decision in the same case will take place.
- 5 DRB's decision should be binding in the sense that the registration unit shall accomplish DRB's decisions as soon as they have been made.
- 6 However, a decision from DRB does not preclude the parties' right to sue through the courts.
- 7 The registration unit should designate the members of the DRB, preferably in co-operation with the representatives of the users and authorities.
- 8 The registration unit should work out the specific rules of procedure for the DRB.
- 9 It should not be able to transfer disputed domain names while a dispute is in progress in DRB or the ordinary courts.
- 10 The dispute resolution system should be financed by a small increase on the registration fee and a special complaint fee from the complainant.
- 11 The time limit for entering a complaint for the DRB should be 3 years from the moment the allocation of the disputed domain name was made. However, for the applicant there should be 1 month from the moment the applicant received the notice about the allocation.

The domain dispute resolution board should be evaluated when the system has been active for approximately two years.

Withdrawal of assigned domain names

Recommendations

The WG recommended that the registration unit should be authorised to withdraw assigned domain names in case it finds it obvious that the registration is in conflict with the assignment rules, Norwegian law or third-party rights. The WG considers that it would be unnecessarily formalistic if the registration unit should have to await the opinion of the dispute resolution board in obvious cases.

Furthermore, the WG is of the opinion that the authorities can have a distinct need to complain registered domain names if e.g. private actors get assigned a domain name that obviously "belongs" to public institutions and possibly abuses it, or in cases where a party register a domain name which gives the impression of exercising public authority. The WG therefore recommended that the registration unit should be able to withdraw assigned domain names in case the domain name gives a wrong or incorrect impression that the holder is a public body.

Preliminary conclusions after the hearing

Taking the results from the hearing into consideration the conclusion still is that the registration unit should be able to withdraw obviously incorrectly assigned domain names. This is substantiated by among others the custom of having safety nets against *evidently* incorrect decisions without being forced to await the dispute resolution board's decision. It is worth noticing that this is a *right* given the registration unit - not a *duty*. What is *evident* or *obvious* will be worked out in detail e.g. through the experience of DRB.

Summing up

Principally, it looks like the proposals from the WG will be carried out like they were suggested. Taking the results of the public hearing into consideration, however, we do see a need for some small adjustments. One example is whether the DRB's decision should be advisory only or whether it should be compulsory for the registration unit to accomplish it. Another example is the length of the time limit for entering a complaint for the DRB.

It is expected that a definitive regulation text will be adopted by the government during the spring of 2003. These regulations will establish a legal framework for any registration unit activities as to the administration of the Norwegian country code top level domains

As mentioned all conclusions in this note are still not final, awaiting the adoption of the draft regulation by the Government.
