

Input from the Norwegian Post and Telecommunications Authority on Draft Applicant Guidebook V3 (DAG V3)

Normally we would prefer to work through GAC and influence our opinion in the formal GAC advice. Even so, we want to express our views on some issues. There are several other important issues which we are confident that formal advice from GAC to the ICANN Board will be forwarded on the DAG V3 in due course. We would also like to draw your attention to the GAC Principles regarding new gTLDs paragraph 3.3:

If individual GAC members or other governments express formal concern about any issues related to new gTLDs, the ICANN Board should fully consider those concerns and clearly explain how it will address them.

Generally we feel that ICANN should have, at an earlier stage, taken more consideration to the GAC Principles regarding new gTLDs presented by the GAC to the ICANN Board on March 28, 2007.

The need for more categories of gTLDs and procedures on Re-Delegation

In GAC's letter dated 18 August 2009, comments on DAG v2:

GAC proposed that ICANN should actively consider a more category-based approach to the introducing of new gTLDs. This will allow for different application procedures for different types of gTLDs (provides a structure for a more measured rollout of new TLDs). In the response from Chairman Peter Dengate-Thrush in letter of 22 September, it is said that significant consideration has been given to the issue of introducing category-based TLDs in the new gTLD process. This has resulted in creation of three gTLD categories, community-based TLDs, geographic name TLDs and open TLDs. ICANN inform that they consider that introduction of more gTLD categories will lead to a very complicated contractual compliance environment. Norway realize that it is a considerable task establishing different categories - defining, delimit, setting conditions etc. On the other hand, it will be challenging to evaluate all the different application types that may be applied for under a huge category "open TLDs". Norway have the opinion that the establishing of more categories and application procedures also opens up the possibility for making terms and procedures more predictable for the applicant and other interested parties, and the evaluation of applications could be more standardized and manageable for ICANN.

GAC pointed out that governments and other public authorities have a legitimate interest in the use of geographical names as new TLDs, and that strings that are meaningful representation or abbreviation of a country name or territory name, should not be allowed in the gTLD space. Also that if geographical names other than country names or territories are allowed as gTLDs (geoTLD), the principles of subsidiarity must apply also after delegation. It is a need for procedures that make it possible for the relevant governments or public authorities to initiate a re-delegation process.

Norway note that GAC advice has not followed up on in DAG V3. ICANN has not stated country names and territory names as national resources that should be treated as a ccTLD/according to the GAC ccTLD Principles. There has not been a follow up on protection of national interest regarding meaningful representation or abbreviation of the country or territory name. There is no re-delegation rule or dispute resolution system established to solve a case were a geographical gTLD operator is acting against the terms of approval or non-objection by the relevant governments. The establishing of an approval or non-objection

procedure must necessarily imply a possibility for the governments to set conditions. One issue that is crucial for governments is the ability to enforce these agreed conditions after delegation. If there is no defined predictable procedure for how ICANN will act in case of breach of contract or agreed conditions between the registry and governments, this could lead to a situation where governments will have to reserve themselves from giving approval or non-objection for new geo-TLD`s. DAG V3 should determine that ICANN will respect a legally binding decision from the relevant/local court regarding the compliance of a geo-TLD agreement between relevant governments and the registry, including carry out a re-delegation if that is the court decision. Drawing a parallel to DAG v3 module 1, subsection 1.2.1, - ICANN may deny an otherwise qualified applicant for a new gTLD if the applicant has been judged by a court (fraud or breach of fiduciary duty).