Comments to the proposed Applicant Guidebook from UNINETT Norid AS, the Norwegian ccTLD

Module 2: Geographical Names - Governmental "support or non-objection" – post-delegation

We were very satisfied with the solution in DAG 4 chosen for the post-delegation process in the "support or non-objection" situations for geographical names.

The principle seems to have been retained in the most recent Applicant Guidebook (AG), which states:

"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 a registry operator has deviated from the conditions of original support or non-objection". (Footnote 12, page 2-20 in the redlined version of the Applicant Guidebook).

Unfortunately, the *wording* regarding ICANN's duties in the case of a post-delegation withdrawal of government support has been considerably weakened in the current AG compared with the wording in the DAG 4. We hope this is unintentional. The AG text should be brought in line with the wording in the letter from Peter Dengate-Thrush to the GAC of 23rd November, subsequent to publication of the AG the 12th November.

In the Attachment to Module 2, Sample Letter of Government Support, the text also has been changed substantially from DAG 4 to AG.

Sample letter (DAG4): "(Government/public authority) further understands that the Registry Agreement provides that ICANN <u>will comply with</u> (our underlining) a legally binding decision in the relevant jurisdiction where there has been a dispute between the (government/public authority) and the applicant".

Sample letter (AG): "(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 <u>may implement</u> (our underlining)the order of any court sitting in such jurisdiction in favor of such governmental entity related to the TLD."

This text is further repeated in the "New gTLD Agreement", Article 7, clause 7.13 in the AG, which reads:

"Government Support

 In the event that the TLD was delegated to the 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_ (our underlining) the order of any court sitting in such jurisdiction in favor of such governmental entity related to the TLD."

The DAG 4 provided assurances to the national governments that ICANN would follow a legally binding decision in the relevant jurisdiction (which should of course be the jurisdiction of the country served by the geographical TLD) if there has been a dispute between the (government/public authority) and the applicant. As it stands in the AG, the local administration has no guarantee whatsoever that ICANN will follow such a legally binding decision. This may reduce the willingness for governments to support applications for geographic names.

In the letter from Peter Dengate-Thrush of 23th November to the GAC, he uses the following words when he speaks of the Post Delegation on page 5:

> "Regarding the question of whether the operations of registry operators of "geo-TLDs" should conduct business under the legal framework of the country providing the letter of support or non-objection to ICANN: the government approving the applicant can impose that requirement on the applicant as a condition of support.

> While an agreement between the gTLD registry and the government or public authority, would not be enforceable by ICANN, ICANN would comply with a legally binding decision (our underlining) from a court of competent jurisdiction."

As the Proposed Final Applicant Guidebook was published 12th November and the letter from Peter Dengate -Thrush where he uses the wording from the DAG 4 is dated 23rd November, we conclude that the wording in the AG - "may implement" - must be a mistake.

Another point we want to call your attention to is the different wording used for "jurisdiction" and "courts". It is of utmost importance to be clear on *which* jurisdiction ICANN is talking about. Below is a selection of the wording in the different documents, just to illustrate a discrepancy which does not create predictability.

- In DAG 4 the expression used is: "the relevant jurisdiction"

- In the proposed sample letter, DAG 4: "legally binding decision in the relevant jurisdiction where there has been a dispute between the (government/public authority) and the applicant"

- In the proposed sample letter, AG: "the order of any court sitting in such jurisdiction in favor of such governmental entity related to the TLD"

- In the Registry Operator Agreement, article 7.13: "any court sitting in such jurisdiction in favor of such governmental entity related to the TLD"

- In the letter from Peter Dengate-Thrush: "a court of competent jurisdiction"

Please look into this and revise the text to clarify that ICANN will comply with a legally binding court order from the relevant court in the jurisdiction of the government or public authority that has given the support to the applicant.

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