

**DOCUMENT FOR ccTLD WORKSHOP**

**Source:** Norway  
**Title:** .no – Now or never

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**Model for the management of the Norwegian Domain Name Administration and the resolution of disputes**

**Report by the Working Group on Domain Names, March 2002**  
*Subject to changes*

The name policy (hereinafter called the Assignment Rules) for domain names under the country code top level domain .no was liberalised in February 2001. In connection with this liberalisation, the Ministry of Transport and Communications made it a condition that a phase 2 process involving a closer study of certain issues should proceed. In May 2001 the Ministry appointed a Working Group that was charged with the task of reviewing the management of the .no domain, the need for a body to resolve disputes over the rights to domain names, the withdrawal of assigned names, and appropriate measures for restricting domain piracy. This Group was to give priority to the issues of administration and the resolution of disputes and was to submit a preliminary report by 1 February 2002 and a final report by no later than 1 June 2002. In the present report the Group evaluates all items in its assignment, with the exception of measures to restrict domain piracy. Accordingly, this report is considered to be the Group's final report.

The Working Group has not considered the issue of changes to the Assignment Rules domain names under .no.

**1. Summary**

The main goal of the Working Group is to discuss and reach an agreement on the objectives that the administration of .no should seek to comply with. The Group considers 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 administration of the domain name should safeguard the interests of the users. The process of domain name assignment should for example be quick, of high quality and inexpensive.

Against this background, the Group arrived at the following general conclusions:

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In regard to the existing *administrative model*, the Group is of the view that the division of responsibility between NORID<sup>1</sup> and public authorities needs clarification. The Group recommends that the .no domain should be managed in such a way that the Ministry of Transport and Communications and the Norwegian Post and Telecommunications Authority is given the overall political and administrative responsibility, with the right and duty to propose and be in charge of the legal framework for managing the .no domain. This proposal is complying with the GAC<sup>2</sup> model for managing country code top level domains. The Group recommends that the relationship between the authorities and the registration unit in Norway should be regulated in regulations prescribing the general framework and the specific conditions stating the management of the country code top level domain .no. Draft regulations prepared by the Working Group are attached as Annex 3.

The Working Group has considered the existing *dispute resolution system* and has concluded that it should be extended to include third-party disputes. The Group recommends that a dispute resolution board should be established, based on NOK<sup>3</sup>, the existing claims committee, 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 Group recommends 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.

### 1.1 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](http://www.odin.dep.no), odin is a third-level domain, dep a second level and .no the top level or country domain. Besides being “signposts” for Internet searches, domain names serve a distinguishing function.

At present, NORID manages 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 by IANA<sup>4</sup>, which was originally the superior international authority for the administration of the Internet. IANA had a

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<sup>1</sup> 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.

<sup>2</sup> GAC (Governmental Advisory Committee) is an advisory committee for ICANN and consists of representatives from authorities in about 40 countries. 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>

<sup>3</sup> NOK = NORID's dispute resolution committee

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

contract with the US government. With a view to internationalising responsibility for managing the Internet, the US Government established the private, non-profit organisation ICANN<sup>5</sup>. It was intended that ICANN should gradually take over IANA's duties, but it has not yet done so. Until now, ICANN has not lived up to the expectations. Accordingly, reorganisation is under discussion. ICANN, amongst others, argues that there must be greater participation by national authorities in the development of ICANN policies. NORID (through UNINETT FAS AS) also derives its authority from ICANN, which manages the root servers<sup>6</sup> that direct the digital flow to the correct top-level domains. Alteration of the registration unit will mean that ICANN will have to make technical alterations to its domain name system. Thus in fact and in legal terms ICANN has authorised NORID (represented by UNINETT FAS AS) to manage 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 services. As a result they also fall within the jurisdiction of the Ministry of Transport and Communications and the Norwegian Post and Telecommunications Authority. 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 the Norwegian Post and Telecommunications Authority", 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.

## **1.2 The Working Group's recommendations regarding the management model**

In the Working Group's opinion, the present system for managing the country code top level domain .no functions extremely well. The system has many advantages and these should be allowed to continue, particularly the efficiency of the scheme (including quick processing and high operating stability), where Norway is in a strong position in an international context. Moreover the system is highly regarded in the market and after more than 15 years is well established.

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 Working Group is of the view that it is 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 management of .no. A certain degree of public control over the management of domain names is necessary if the authorities are to formulate a comprehensive policy on ICT<sup>7</sup> development. Furthermore a clearer framework for the assignment of names will facilitate greater predictability for holders of and applicants for domain names.

The Working Group recommendation is that the Ministry of Transport and Communications and the Norwegian Post and Telecommunications Authority should have overall political and

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<sup>5</sup> 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>

<sup>6</sup> 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. See chapter 3.1.

<sup>7</sup> ICT = Information and Communications Technology

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administrative responsibility for .no on the pattern of the *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 divided between ICANN and national authorities, and between national authorities and the registration unit, by means of, for example, an agreement, regulations or by statute. The Group recommends that the relationship between the authorities and the registration unit be determined through *general regulations* that lay down the framework conditions and principles for management of the country code top level domain .no.

The Working Group considers that this approach will allow the advantages of the existing model in terms of its efficiency, low cost and flexibility to be continued and further developed in the new model. At the same time the division of responsibility between the authorities, the registration unit and ICANN can be clarified, by defining specific rights and duties for each party. Moreover international harmonisation dictates that Norway should implement the GAC principles, which are recognised by both the EU and ICANN. Norway has given indirect support to the GAC principles through its participation in the GAC.

The Working Group is of the view that the regulations should be formulated in a general manner so as to apply to any party managing country code top level domains for territories under Norwegian jurisdiction. Furthermore, the regulations should be drawn up in a manner that they make it clear that the registration unit does not exercise administrative powers on behalf of the authorities. This means that the regulations must not describe rights and duties in detail and that the authorities' requirements take the form of framework conditions. Thus the regulations will not delegate powers to public authorities and the administrative rules of the Public Administration Act will not be applicable to the registration unit's operations. Assignment of domain names by the registration unit will still follow private law rules. Relations between the registration unit and the applicant for/holder of a domain name will be entirely contract-based. The influence of the authorities over the operations of the registration unit will be secured by imposing public law requirements on the activities.

As far as the actual organisation of NORID is concerned, the investigations conducted by the Working Group reveal that most operators in the market consider that NORID's organisational ties to UNINETT/the Ministry of Education and Research function well. For this and other reasons, the Group sees no need to create any other form of tie. Furthermore the government connection afforded by ownership by the Ministry will secure assistance from the authorities in the event of, for example, the bankruptcy of the registration unit.

Nevertheless the Working Group considers that some adjustments should be made to the way in which NORID is organised, one reason being to make it clear to the public where authority for .no assignments lies. The Group therefore recommends that NORID be split off as an independent limited liability company under the direct ownership of UNINETT AS.

### **1.3 The Working Group's recommendations for a dispute resolution model**

The domain name assignment rules were changed in February 2001. The changes involved considerable increase in users' freedom of choice, so that in principle they are now able to apply for whatever names they wish, provided that the formal criteria are satisfied. These criteria are that the applicant must not already hold more than 15 domain names and that the domain name applied for has not already been registered.

The relaxation of the assignment rules has led to a greater risk of third-party disputes, i.e. disputes between the applicant for/holder of a domain name and a third party claiming infringement of his rights. Disputes of this type are not dealt with by NOK, the existing claims committee. At present

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there are very few third-party disputes, considering the number of domain names that are assigned. Most cases are solved amicably, but some have been brought before the courts.

Nevertheless the Working Group has concluded that it is necessary to establish a separate dispute resolution body able to handle third-party disputes. In the first place, it is reasonable that since NORID can (potentially) register domain names that infringe the rights of third parties, there should exist a simple system enabling third parties to oppose registrations. Secondly, this would avert an increase in the burden of work of the already hard-pressed courts of law. Thirdly, a special dispute resolution agency would probably be perceived as more easily accessible than the ordinary courts. Legal proceedings can be time-consuming and costly for both parties. Fourthly, the Group considers it important to heed the signals from the market that there is a need for an alternative or supplement to the courts for solving third-party disputes.

The Working Group considers that the following factors should be borne in mind when establishing a dispute resolution body:

- \* The cost of the dispute resolution procedure, so that the resources spent on the dispute resolution agency reflects the low percentage of registered domain names that actually end in a dispute.
- \* Quick proceedings, so that the process between complaint and decision is brief.
- \* The need to secure due process.
- \* The public must have confidence in the dispute resolution procedure.
- \* The procedure must protect the interests of both parties.
- \* The adversarial principle, also, the principle of contradiction or counterclaim meaning that both parties must be allowed to state their cases.

With these considerations in mind the Working Group has concluded that the best approach to a dispute resolution system is to extend NOK, the existing claims committee, to include third-party disputes. In particular, the need to maintain a balance between the resources expended on the dispute resolution system and the low percentage of third-party disputes indicates that a new agency should not be established when a suitable system capable of expansion already exists. NOK deals with complaints relating to the assignment of domain names and has established procedures for this. It is proposed that the new, extended agency should be called "Domeneklagenemnda" (the Domain Complaints Board, the DCB).

The Working Group has the following recommendations regarding the manner in which the DCB should be organised:

- The DCB should be able to handle all types of third-party disputes, as well as complaints against decisions made by the registration unit in connection with the registration of domain names.
- Applicants for and holders of domain names, third parties claiming that registration infringes their rights, the registration units, public agencies and the Norwegian Post and Telecommunications Authority should be entitled to file complaints with the DCB.
- A system should be established for voluntary conciliation proceedings prior to complaint proceedings in the DCB. A time limit should be set for the conciliation period. It should be possible to extend this period if there are reasonable chances of a compromise solution. Conversely, if it is clear that conciliation proceedings will not succeed, it should be possible to omit the conciliation proceedings.

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- It should be possible to appeal decisions adopted by the dispute resolution board to the courts of law so that a DCB decision will not deny the parties the right to sue through the courts. This will ensure correct decisions in complicated cases, thereby securing adherence to due process.
- The DCB decisions should be advisory in the first instance. The question of whether the DCB decisions should be binding can be decided when the DCB's operations are reviewed.
- The registration unit (NORID) should be charged with the task of appointing representatives to the DCB, on the recommendations of Norpol (an advisory body to NORID). The DCB should not include representatives of the authorities, so that there is no conflict between supervisory functions and the processing of cases and complaints by the DCB. The registration unit should also be charged with the task of drawing up the specific case processing rules for the DCB.
- The dispute resolution system should be financed by a supplement to the registration fee, in addition to payment by the complainant of a fee corresponding to three times the court fee. This fee should be repaid if the DCB's decision is in complainant's favour or if an amicable settlement is reached.

The Working Group considers that operations of the dispute resolution board should be reviewed after the system has been functioning for one year.

### **1.4 The Working Group's recommendations on recalling assigned domain names**

The Working Group recommends that the registration unit should be empowered to recall assigned domain names if it finds that the registration clearly contravenes the Assignment Rules, Norwegian law or the rights of a third party. The Group considers that it would be seen as unnecessarily formalistic if the registration unit had to await a decision by the dispute resolution board on obvious matters.

Furthermore the Working Group recognises that the authorities oppose the registration of domain names in certain instances based upon legitimate grounds, for example where a name that clearly "belongs" to a public institution is assigned to a private entity and is misused, or where a domain name assigned to a private party gives the impression of involving the exercise of official powers. Therefore the Group recommends that the registration unit should also be empowered to recall assigned domain names if the domain name unrightfully gives the impression of pertaining to a public institution.

The scope for recalling a domain name is embodied in the regulations proposed by the Working Group. The regulations thereby set a lower threshold on cases that can be handled by the dispute resolution board.

### **1.5 Financial and administrative consequences**

Several of the measures suggested by the Working Group will need to be specified in further detail. For this reason it is too early to conduct an exhaustive assessment of the financial and administrative consequences. Nevertheless some preliminary appraisals are given below:

The Group's recommendations regarding the *administrative model*, will have only minor financial/administrative consequences.

- Drafting and implementing the regulations setting the framework for the domain policy will have no significant financial/administrative consequences.

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- Adjusting the organisational links to NORID, so that NORID is split off as a separate limited company owned by UNINETT AS, should be possible within the framework of the existing budget.
- For holders of and applicants for domain names, the proposal will have indirect but beneficial consequences in the form of clearer rules on assignment and greater predictability. The proposal will have no financial/administrative consequences for users of domain names.

The Working Group's proposal regarding the establishment of a *dispute resolution*

*system* is unlikely to have any major administrative and financial consequences, since the proposal is based on extending the powers of the existing system.

- It is proposed that the complaint and dispute resolution system should be financed by the users by means of a small addition to the registration fee plus a fee corresponding to three times the court fee. The dispute resolution model chosen will accordingly have financial consequences only for the users of domain names.
- It is assumed that the dispute resolution system will generate savings in the form of fewer lawsuits in domain name disputes than would otherwise have been the case.

The Working Group's proposal for *recalling assigned domain names*, may have a positive effect for both the private and the public sector. In cases where the solution is obvious, the parties will have no need to bring the matter before the complaints board or the courts if the registration unit is entitled to recall the unrightfully assigned domain name.

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