

DOCUMENT FOR ccTLD WORKSHOP

Source: Secretaría de Estado para las Telecomunicaciones y la Sociedad de la Información (SETSI)

Title: Act 34/2002, of 11 July, on information society and e-commerce services

The text below is an extract of the full document, presently undergoing translation. The sixth supplementary provision was considered of particular interest for the participants to this Workshop. The full text of the document will be made available in due course.

Sixth supplementary provision. Allocation system for .es domain names.

- 1) Pursuant to the sixteenth supplementary provision of Act No. 17/2001 of 7 December on Trademarks, this provision establishes the basic principles of the allocation system for domain names under the country code for Spain, namely .es.
- 2) Pursuant to the sixth supplementary provision of the General Telecommunication Act, No. 11/1998 of 24 April, the corporate public entity *Red.es* is the allocating authority with responsibility for managing the register of .es Internet domain names.
- 3) The allocation of .es Internet domain names shall take place according to the terms established in this provision, as well as in the National Plan for Internet Domain Names and other specific rules issued subsequently by the allocating authority and, insofar as they remain compatible with such provisions, with the general practices and recommendations of international organizations and agencies active in areas relating to the management of the Internet domain name system.

The allocation criteria for .es domain names shall maintain the appropriate balance between, on the one hand, the confidence and legal certainty necessary for the development of electronic commerce and other electronic services and activities and, on the other, the flexibility and adaptability needed to respond to the demand for allocation of .es domain names, thereby assisting the development of the information society in Spain.

Separate domains may be created within .es to facilitate the identification of content either by title or by the type of activity concerned. For instance, names may be created which refer to education, entertainment or the appropriate moral development of children and

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young persons. The allocation of these third level domain names shall take place under the terms established in the National Plan for Internet Domain Names.

- 4) Pursuant to the National Plan for Internet Domain Names, any persons or bodies, whether or not they constitute a legal entity, with interests in or links with Spain, may apply for an .es domain name, provided they meet all the other requirements for obtaining such a name. .es domain names shall be allocated on a first-come, first-served basis to eligible applicants, while no preferential treatment of a general nature may be afforded, for the purposes of obtaining or using a domain name, to the holders of any particular rights.

The allocation of a domain name entitles the owner to use and to retain that name, provided the owner fulfils any particular requirements that may be established. In the event that the allocating authority finds evidence of a failure to fulfil such requirements, and on completion of the relevant procedures determined for each case, which shall include a hearing for the parties concerned, the domain name shall be cancelled.

The owners of .es domain names shall comply with any technical rules and conditions which may be established by the allocating authority to ensure the smooth functioning of the .es domain name system.

Persons or organizations for which a domain name has been registered are responsible for using it correctly in accordance with the law, and for acting with respect for industrial or intellectual property rights, pursuant to the provisions of this Act. The allocating authority shall cancel domain names whose owners fail to respect those rights or conditions, provided it obtains the corresponding legal decision, without prejudice to the provisions contained in § 8 of this supplementary provision.

- 5) The National Plan for Internet Domain Names shall provide for appropriate mechanisms to prevent the improper or speculative use of domain names or unlawful exploitation of generic terms or place-names and, more generally, to prevent disputes from arising over the allocation of domain names.

The Plan shall also include the necessary safeguards to reduce the likelihood of users experiencing error or confusion over the ownership of domain names.

To that end, the corporate public entity *Red.es* shall ensure the necessary coordination with Spanish public registers. Owners must facilitate access to and consultation of public registers, which shall in all cases remain free of charge to the corporate public entity *Red.es*.

- 6) Domain name allocation shall be carried out by telematic means that ensure the flexibility and reliability of the registration procedure. Applications and notifications shall be sent electronically, except insofar as alternative provisions exist in the allocation procedures and other operations relating to domain name registration.

Registration agents, as intermediaries in procedures relating to domain name registration, shall be entitled to provide auxiliary services for the allocation and renewal of such names, in accordance with the requirements and conditions established by the allocating authority, which must, in all cases, ensure respect for the principle of free competition between such agents.

- 7) The National Plan for Internet Domain Names shall be adopted by Order of the Minister of Science and Technology, on the proposal of the corporate public entity *Red.es*.

The Plan shall be supplemented by allocation procedures and other operations relating to the registration of Internet domain names and addresses laid down by the Chairman of the

corporate public entity *Red.es*, pursuant to the eighteenth supplementary provision of Act No. 14/2000 of 29 December on Fiscal, Administrative and Social Policy Measures.

- 8) In accordance with applicable provisions, the allocating authority may establish an extrajudicial dispute resolution system concerning the use of domain names, including disputes over industrial property rights. This system shall provide the parties concerned with adequate legal guarantees, and shall not prejudice any legal action they may wish to take.
 - 9) With a view to encouraging the development of e-administration, the corporate public entity *Red.es* may provide a service of telematic administrative notifications and offer reliable proof of the date and time of their receipt.
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