**UNINETT NORID AS (NORID) response to the consultation on GNSO Community Comment 2 (CC2) on New gTLD Subsequent Procedures Policy Development Process**

Norid is pleased to submit its response to the CC2 questionnaire. After reading through the questionnaire we have found that for us only some of the questions under Work Track 2 is relevant for us to answer. In addition, we have answered a few of the Additional Questions.

For the record, we find it useful to provide some information about our organization to make it easier for the PDP WG members and the community at large to understand our perspectives in our answers. Norid has been the country code operator for .no since 1987 and runs the registry for Norwegian domain names. All domain names directly under .no are registered with us. In addition to processing applications we develop the domain name policy according to the needs of society. We are also responsible for the technical operation and development of associated services.

In order to develop and adapt the rules for allocating domain names, we co-operate with various stakeholders. We also take social responsibility by working to keep the domain name system reliable and robust, and to ensure that it is governed in an open and democratic way.

The service is regulated by the Domain Name Regulations and is supervised by the Norwegian Communications Authority (the former Norwegian Post and Telecommunications Authority). Norid is not a public administrative agency, and the allocation of domain names is based on private law. We are a neutral party, and the business is run non-profit.

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Work Track 2 – Legal, Regulatory, and Contractual Requirements

2.2.1

Do you believe any changes are needed to the String Requirements at the top level as defined in section 2.2.1.3.2 of the Applicant Guidebook (<https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf)>?

Please explain.

* Section 2.2.1.3.2, Part III, paragraph 3.1, first sentence: “Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters.”
  + This definition should have been much more stringent. There is no attempt to describe what “generic” really means. It is only used as a contrast to country code – everything that is not 2-letter ASCII is defined as generic. Both semantically and legally this is not correct.
  + There is been an attempt in the Registry Agreement Specification 11.3.d to define a “generic string” as a string consisting of a word or term that denominates or describes a general glass of goods, services, organizations or things, as opposed to a specific brand of goods, services, groups organizations or things from those of others.
  + This is a definition that makes sense. However, it has not been followed up in practice. Brands are definitively not “generic terms”. Neither are geographical names in most cases; at least not names of countries. Among the words that have been accepted as gTLDs there are many that are specific, given names that legally would not have been characterized as generic.
  + This should be looked into in the next round. As there has been suggestions on establishing categories in the next round, this might solve the discrepancy by making the rules somewhat different for the different categories.
* It is important that the protection for 2-letter ASCII codes remains also in new rounds, ref. 2.2.1.3.2, Part III, paragraph 3.1, second sentence: “Two- character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard.”
  + Neither practically nor politically it would be a good idea to change this rule. The reliance of this policy is consistent with RFC 1591, on a standard established and maintained independently of and external to ICANN and widely adopted in contexts outside of the DNS.

2.2.2

Do you believe any changes are needed to the list of Reserved Names at the top level as defined in section 2.2.1.2.1 of the Applicant Guidebook (https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf?

Please explain.

* Regional organizations such as Centr (https://www.centr.org/)should be protected at the same level as GNSO and CCNSO. Otherwise, the list is fine.

2.2.3

Do you think Special Use Domain Names should be added to the Applicant Guidebook section on reserved names at the top level to prevent applicants applying for such labels?

* Yes, if IETF has justified the need for this, we support it. We do not think IETF would have asked for this without a very good reason.

2.4.1.

In the 2012 round, the operation of a TLD where the string was considered “generic” could not be closed to only the Registry Operator and/or its Affiliates. Originating from GAC Advice on the subject, this rule was promulgated by ICANN’s New gTLD Program Committee of the ICANN Board, but was never adopted as a policy by the GNSO. This rule was subject to public comment and input from the community. Should this rule be enforced for subsequent application windows? Why or why not?

* We suppose you here mean “true” generic, such words as boat, car, book etc. Cf. our comments above under 2.2.1
* These words should in our opinion not be allowed to be closed for use only of the Registry Operator and/or its Affiliates. The reasoning behind this view is that these words would never have been accepted as a brand and received trademark protection. No-one should be the only one to be allowed to use a true generic word.
* However, the Registry Operator should be allowed to allow second level registrations under this gTLD under certain conditions, set by them. More like the sponsored TLDs from earlier times. To be able to have a second level domain under .museum, you had to prove that you really were a museum etc.

2.4.2

Do you have suggestions on how to define “generic” in the context of new gTLDs? A “generic

string” is currently defined in the Registry Agreement under Specification 11.3.d as meaning, “a string consisting of a word or term that denominates or describes a general class of goods, services, group, organization or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.” Are any modifications needed to the definition? If so, what changes? If the exclusion of closed generic TLDs is to be maintained, are there any circumstances in which an exemption to the rule should be granted?

* This above definition makes sense. It separates true generic names from specific names. However, it has not been followed up in practice. Brands are definitively not “generic terms”. Neither are geographical names in most cases; at least not names of countries. Among the words that have been accepted as gTLDs there are many that are specific, given names that legally would not have been characterized as generic.
* When discussing if “closed generics” should be allowed you have to separate true-generics from pseudo-generics. True-generics should not be allowed to be closed, but to be free to set certain conditions under which registrants are allowed to register at second level.
* Please also see our comments under 2.2.1

2.5.1

“Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more gTLDs and to delegate new gTLDs after such approval is entirely at ICANN’s discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.”

Do you believe that this paragraph gives ICANN an absolute right to reject any application for any reason including a reason that contradicts the Applicant Guidebook, or any law or policy? If yes, should such an unrestricted right appear in any modifications to the Guidebook? If no, please list the other documents that you believe should be read in conjunction with this paragraph, e.g. GNSO Policy on new gTLDs, ICANN Bylaws, other portions of the Guidebook, California implied covenant of good faith and fair dealing, etc.

* In our view this gives ICANN extensive rights. However, ICANN offers a resource at their discretion and enters into a private contract with the applicant and they should be free to set conditions. However, ICANN should make the Applicant Terms and Conditions as predictable as possible.
* The expression “applicable law or policy” could with advantage be extended to be more exhaustively presented. If ICANN finds it politically difficult to go forward with an application, for instance after immense resistance from the GAC, they should be able to choose not going into this kind of problems that could lead to delays and political difficulties. We should never forget that there is still forces wanting to destroy the multistakeholder model.

2.5.2

According to Section 6 of the Applicant Terms and Conditions, the “covenant not to sue ICANN”, an applicant foregoes any right to sue ICANN once an application is submitted for any reason. Currently, an applicant can only appeal an ICANN decision through the accountability mechanisms, which have a limited ability to address the substance of the ICANN decision. If ICANN had an effective appeals process (as asked about in Question 3.5.2 below) for an applicant to challenge the decisions of the ICANN staff, board and/or any entities delegated decision making authority over the assignment, contracting and delegation of new gTLDs, would a covenant not to sue be more acceptable? Please

explain.

* Yes, the covenant not to sue would be more acceptable it there was an effective appeals process. As it is now, the registrant is rather without legal protection if feeling that the decision taken by ICANN is really wrong and not based on what is listed in the Applicant Terms and Conditions.
* To establish this appeals process/mechanism could be a prerequisite for receiving new applications.

2.5.3

According to Section 14 of the Applicant Terms and Conditions, ICANN has the ability to make changes to the Applicant Guidebook. One task of this Working Group is to

address the issue of predictability in future rounds, including with respect to the AGB. Do you think that ICANN should be limited in its ability to make changes to the Applicant Guidebook after an application procedure has been initiated? Please explain.

* First and foremost, we would hope that fewer changes will be required to be made in the AGB in subsequent rounds. We all know how many years it took to reach a compromise in the first round. It is of fundamental importance that there is a certainty in the process and that all parties know what they can plan for.
* However, we think that ICANN should not receive applications until the AGB has been accepted by all stakeholder groups. To change unilaterally after that will make the predictability very poor.
* However, this depends on whether the result for next round will be “one window opened and then closed and nothing more” or “several windows one after another”. In the last instance, there might be necessary to correct possible flaws between the “windows”.
* In these instances, ICANN should seek consensus from the stakeholder groups before opening up the next window, and be very careful to make announcements on the changes.

**Additional Questions**

1. The topics above, and the corresponding questions, are all related to the scope of work as determined in this WG’s charter. Do you feel that all topics must be fully resolved before any subsequent new gTLD procedures can take place?

Answer: Perhaps not all, but the most controversial ones.

If not, do you believe that there is a critical path of issues that MUST be considered and addressed? Alternatively, do you believe that there are certain challenging issues where an existing solution may be present (e.g., in the Applicant Guidebook), which can serve as an interim solution, while debate can continue in parallel with the launch of subsequent new gTLD procedures?

Answer: As you will understand by our previous answers, we think that the rules in the Applicant Guidebook on geographical names should be left as they are today until, if possible, finding a framework acceptable to all stakeholders. This is especially important for treatment of country and territory names, 2.2.1.4.1 in the AGB. As long as we haven’t found a compromise acceptable for all, this should stand. Treatment of geographical names is difficult and controversial. Therefore, this should not stop registration of “true” generic terms, so that those should have to wait until the problem with geographical names is solved – if possible.

1. Many in the community have noted the length of time from the close of the application submission period (i.e., June of 2012) to the informal projections for the beginning of subsequent new gTLD procedures (e.g., 2020). Do you have any suggestions on how to shorten that timeline, either now in the event of future rounds or other procedures?

Answer: We think categories would solve some of the problem. To allow the less controversial names, “true” generics, IDNs and leave the more controversial names, such as for example geographic names, until we find a solution all can agree on.

We would like to add that we miss a Work Track 5 for geographic TLDs. There is so much discussion going on in the 4 Work Tracks already established that is of minor interest for pure ccTLDs (and maybe also for governments). When discussions of what to do to solve the controversial issue on what to do with country & territory names and other geographical names are drowning in discussions on all other issues important for GNSO, we fail to get the necessary attention and participation of ccTLDs and governments in these Work Tracks – and in the New gTLD Subsequent Procedures Working Group. We think it would be easier if the issue of geographic names was isolated in one work track especially designed for this.