

TERTIARY EDUCATION AND RESEARCH NETWORK OF SOUTH AFRICA NPC



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Adv Lerato Seema
.ZA Domain Name Authority
Per email: rrlrsubmissions@zadna.org.za

Dear Advocate Seema

Re: Submission in respect of the Draft .ZA Registry and Registrar Licensing Regulations and Procedures

The Tertiary Education and Research Network of South Africa NPC (TENET) welcomes the invitation to provide written representation on the Draft .ZA Registry and Registrar Licensing Regulations and Procedures published in Government Notice R2039 of April 2022. Please find our submission attached herewith.

TENET is a non-profit company established by the higher education sector to serve that sector's niche connectivity and ICT requirements. It holds IECS and IECNS licenses and is the operating partner of the South African National Research and Education Network (NREN). This network serves some 350 separate sites of 85 institutions of higher learning and research, including all 26 public universities in South Africa.

TENET has a long association with the .ZA domain name space and the Authority. It is the natural successor of the Foundation for Research and Development's UNINET project, to whom the .ZA domain was originally delegated in November 1990. Through these guises it has operated the moderated AC.ZA domain since its inception. It has also played a key role in ensuring the technical stability of the .ZA domain name space by providing domain name servers for .ZA itself as well as for many of the second level domains. Various TENET staff have acted as independent technical advisors to the Authority and have served on its Board.

TENET undertakes to make itself available to the Authority should you require clarification of any aspect of our submission.

Yours sincerely,

Guy Halse
Executive Officer: Trust & Identity

Submission in respect of the Draft .ZA Registry and Registrar Licensing Regulations and Procedures



A. Introductory observations

1. It is almost two decades since the passing the Electronic Communications and Transactions Act, 2005 (“ECTA”) and the establishment of ZADNA. During that time the .ZA domain name space has operated and continued to grow in the absence of such heavy-handed regulation as proposed by GoN R2039.
2. At the same time, the global domain name system has changed radically since ECTA was drafted. There are now over a thousand generic top-level domains available and the average cost of obtaining a domain has dropped substantially. Consumers are spoilt for choice, and the ZA domain name space is competing for Registrants in an increasingly competitive market.
3. The draft regulations contain several substantive flaws. If passed in their current form, they may lead to a loss of confidence in the .ZA domain name space by commercial Registrars and Registrants alike. As the custodian of a moderated domain, TENET and its constituent community have a vested interest in the overall stability of South Africa’s domain name ecosystem. If there is wholesale loss of confidence in the un-moderated second-level domains such as CO.ZA, that will in turn affect the trust the public place in moderated domains like AC.ZA.
4. It is for these reasons that TENET endorses the separate submission of the Internet Service Providers’ Association (ISPA). TENET is a member of ISPA.
5. Moreover, TENET would strongly urge the authority to reconsider its approach to licensing. TENET would favour a far more lightweight regime that promoted growth, confidence, and stability in the .ZA domain name space.
6. The remainder of this submission presumes the Authority’s intent to proceed with the regulations as drafted and primarily concerns itself with the impact of those regulations on the moderated second-level domains such as AC.ZA.
7. The draft regulations are heavily biased towards the un-moderated, fee paying second-level domains and make little to no provision for the moderated¹ second-level domains such as AC.ZA, EDU.ZA, GOV.ZA, MIL.ZA and SCHOOL.ZA. This bias has further been reflected in the public consultations, which have deliberately or inadvertently excluded most of moderated second-level domain registry operators. While CO.ZA certainly accounts for the majority of registrations, the moderated domains are no less important a part of the .ZA domain name space (and indeed have existed for longer²).

B. License exemption for moderated domains

8. Most moderated second-level domains are operated for the public benefit. The operators of such domains do not typically do so as their core business and, even where they may charge for their services, they may not recover all their costs from

¹ See our comment numbered 36 for further discussion of terminology.

² First registration in .ZA domain name space was likely frd.ac.za, now the NRF.

Registrants. Whilst technically competent, the operators of moderated domains have limited capacity for the additional administrative or financial overheads imposed by these regulations.

9. The requirements imposed by *inter alia* 5(3), 7(1)(d), 7(1)(e), 7(5), 8(1)(a), 8(1)(d), 8(1)(e) introduce significant new overheads that do not currently exist within many of the moderated domains.
10. If licensing regulations are to be promulgated, TENET believes it makes sense to explicitly provide for license exemption for moderated domains (in the same way as the Electronic Communications Act, 2005 provides for license exemption for electronic communications licensees). This would provide the Authority with some measure of administrative control without introducing the overheads of relicensing or the financial burden of license fees.
11. This could be achieved by the insertion of a clause substantively similar to the following after section 8:

License exemption

- 8A.(1) *Subject to subsection (2) the Authority may exempt any party that administers a moderated or private second-level domain from licensing as a Registry and, where such an entity also operates as the sole Registrar for that second-level domain, from licensing as a Registrar.*
 - (2) *The administrator of an exempt second-level domain must:*
 - (a) *Operate the domain in terms of a Charter serving a closed or defined community;*
 - (b) *Operate the domain for the public benefit on a non-profit basis;*
 - (c) *Not operate or maintain registry services as its sole or primary purpose;*
 - (d) *Apply to the Authority in a prescribed manner; and*
 - (e) *In as far as is reasonably practicable, comply with the applicable technical and administrative requirements for licensed Registries and Registrars.*
 - (3) *The Authority may by written notice revoke such license exemption, subject to regulation 11 mutatis mutandis.*
12. The Authority may wish to consider an additional application form in the annexures.

C. Requirement for an Identification Document

13. 5(2)(a), 7(1)(d)(i)(aa), and 7(1)(d)(ii)(aa) requires Registrars and Registries respectively to submit copies of Identification Documents but does not further define this term. One assumes the intent is similar to the “know your client” requirements contemplated by the Regulation of Interception of Communications

and Provision of Communication-related Information Act, 2002 (“RICA”), the Financial Intelligence Centre Act, 2001 and other legislation.

14. This requirement is problematic for several reasons:
 - a. It introduces an unnecessary bureaucratic burden on the Registrant;
 - b. It increases the risk of identity theft and fraud by virtue of the distributed nature of the Registrant-Registrar-Registry model;
 - c. It increases the likelihood that Registrants will opt for one of the many generic top-level domains available to them; and
 - d. It is unclear what happens if a Registrant is a juristic person such as a public university or statutory research body that has neither an identity document nor a company registration.
15. It is understood from some of the public consultations and the FAQ that was later published³ that the Authority’s intent in introducing such a requirement is to mitigate risks associated with abuse, intellectual property conflicts, fraud, and cybercrime. However, such concerns are not unique to the .ZA domain name space nor to South Africa. Almost all public suffix or top-level domain name registries will face these challenges.
16. It is well established that the more onerous identity collection requirements under RICA have had limited impact in curbing crime. This failure is evidenced by ICASA’s proposal in GoN 900 of 2022 to mandate the collection of biometric information for SIM cards. The requirement in these draft regulations will do similarly little to combat the issues contemplated in the preceding paragraph 15.
17. Moreover, unlike other services in South Africa with similar identity collection requirements, consumers and potential Registrants are faced with an overwhelming choice of potential domains they can utilise; the choice of DNS domain is not limited by geographical constraints. This is exemplified by the country’s largest online retailer and a major news outlet both successfully utilising a .COM domain as their primary web presence despite primarily servicing a South African market⁴. Thus, ease of registration must be a key consideration in the sustainability of the .ZA domain name space.
18. Should the Authority go ahead with the requirements as drafted, the costs of implementation will ultimately be borne by the Registrant. Even if the registrar fees remain unchanged, this will ultimately push up the cost of registering a domain. Again, given the choice overwhelming choice available, price is a key consideration in the sustainability of the .ZA domain name space. There are already gTLDs that undercut the cost of registering a new CO.ZA domain.
19. For these reasons, prior to regulating such a requirement TENET strongly recommends that the Authority conducts:

³ Archived at https://web.archive.org/web/20220602173540/https://www.zadna.org.za/wp-content/uploads/2022/03/Final-Version_31May2022_FAQs-2nd-set.pdf

⁴ <https://takealot.com/> and <https://news24.com/> respectively, both in the top 20 sites by visits.

- a. an in-depth survey of the mechanisms utilised by other ccTLDs and gTLDs to mitigate risks associated with identifying domain name ownership, together with reasons why those mechanisms are not appropriate in South Africa; and
- b. an impact assessment showing the likelihood that:
 - i. existing Registrants will migrate their registrations to other TLDs when faced with a requirement to provide an identity document; and
 - ii. potential Registrants will be turned away from the .ZA domain name space in favour of less burdensome options.

and makes the results of such available in the public domain.

20. The Authority should further consult with law enforcement agencies, the National Cybersecurity Hub, and the various sector CSIRTs⁵ about the desirability of driving cybercrime such as phishing to other generic top-level domains located outside of South Africa and over which there is substantially limited recourse.

D. Minimalisation of personal information

21. In the absence of clear evidence⁶ that collection of the additional personal information contemplated in 5(2) and 7(1)(d) will achieve their intended objectives, it is likely that these sections fail the principle of minimality in section 10 of the Protection of Personal Information Act, 2013.
22. This same principle further exists in article 5(1)(c) of the General Data Protection Regulation of the European Union, meaning that non-compliance effectively prejudices all South African Registries and Registrars who maintain businesses relationships with entities in countries that recognise the GDPR's jurisdiction.
23. These conflicts can be resolved by clearly delineating the minimal set of information required for effective operation of the .ZA domain name space and allowing any other fields to be optional and collected with consent.
24. Such a minimal set should take cognisance of:
 - a. The degree to which personal information has historically been required to effectively operate domain name services in South Africa;
 - b. The specific purpose(s) for which personal information is collected; and
 - c. That not all second-level registries collect the same personal information as the un-moderated domains or the ICANN registration data model.
25. It should be noted that consent for processing by the Registrar or Registry does not imply consent for the purposes contemplated in 7(2) of the draft regulations.

⁵ Sector Computer Security Incident Response Teams, as contemplated by the National Cyber Security Policy Framework. The SA NREN operates such a sector CSIRT on behalf of the higher education sector (<https://csirt.sanren.ac.za/>) and ISPA operates one on behalf of the ISP sector.

⁶ Such as could be obtained by conducting the survey recommended in §19.a of this submission.

E. Transitional arrangements

26. The .ZA domain name space has operated continuously for almost thirty-two years. The new requirements introduced by 5(2) and 7(1)(d) will be difficult to collect retrospectively and will introduce a huge administrative burden on Registrars and Resellers. The problem is particularly pronounced for the moderated domains, many of whom hold registrations that predate ECTA and the establishment of ZADNA, and who don't maintain ongoing commercial relationships with Registrants.
27. When RICA was introduced, it made provision for a transitional period of some three years. A similar transitional provision is required in these regulations.
28. At one of the public consultations it was suggested that the requirement for collection of new information should be imposed at domain renewal. The regulations in their current form do not provide for such an arrangement.
29. More concerning, however, is that such an approach overlooks the fact that not all domains are subject to renewal. Within AC.ZA there are currently grandfathered registrations belonging to organisations that may or may not still exist. This is something TENET specifically drew to the Authority's attention in 2019 when attempting to deal with the problem of stale registrations.
30. Should the Authority insist on regulating the mandatory collection of Registrant's personal information, then Registries and Registrars need to be empowered to suspend and ultimately delete domains belonging to non-compliant or unreachable Registrants irrespective of renewal status. The Authority further needs to indemnify Registries and Registrars from the consequences of doing so. This is particularly important for the moderated domains where renewal fees may not be imposed and limited recourse is available for legacy but still technically functional registrations.

F. License validity

31. 6(1) read together with 6(5) presumes that a Registries and Registrars are separate entities. While that is generally true, it is problematic in the specific case of the moderated second-level domains, many of which operate using a collapsed or simplified model.
32. Both the capital outlay and ongoing expenses involved in running a Registry far exceed those of a Registrar. Accordingly, it seems logical that a Registrar be licensed for a longer period than Registrars.
33. The five-year license period proposed for registries may make licensing as a Registry commercially unattractive. It may also reduce perceived stability of the namespace.
34. TENET recommends that Registries not exempted per our paragraph 10 be licensed for a period of *at least* ten years. Aligning it with the twenty-year period used for individual electronic communications licensees may make sense.

G. General drafting comments

35. 4(1)(e) and 7(1)(e) presume that all second level domains charge registration and renewal fees, which is not generally true for moderated domains. This could be rectified by the insertion of the word “applicable” (as is the case in 8(1)(b)).
36. 4(2)(a) would appear to refer to the Alternative Dispute Resolution mechanism defined in section 69 of ECTA. However, this mechanism is not universally applicable within the ZA domain name space. Thus, greater clarity of the intent of 4(2)(a) and its applicability to moderated domains is required.
37. As currently written 5(1) forces a Registrar to register a domain regardless of whether the Registrant has met the Registrar’s own contractual requirements. This provides the Registrar no recourse against the Registrant in the case where the Registrant defaults on its obligations (be they payment or otherwise). In the case of AC.ZA, these terms are the only legal basis for a relationship that TENET has with some Registrants.
38. 6(10) and 6(11) refer to “non-commercial” Registries and Registrars. This terminology is ambiguous, confusing and not aligned with historical use⁷. It is suggested that the word “non-commercial” be replaced with the phrase “moderated and/or private” to distinguish them from the un-moderated domains that are typically operated on a fee-paying basis.
39. 5(2)(g) requires Registrars to submit “zone records”, and 7(1)(d)(ii) requires that Registries maintain the same. In the same way, the definition of “registry data” also includes a reference to “zone records”. Under normal circumstances, the DNS is designed to be distributed and neither a Registrar nor a Registry has need of a copy of a Registrant’s zone records. All of these references should more correctly read “zone delegation records” or “delegation records”.
40. 11(1) references “regulation 18” which does not exist. One presumes this was intended to reference regulation 10.
41. The forms in the annexures to the regulations mandate information that is not required by the regulations themselves. In this case they should either disclose the reasons for requiring for such information (for example, where it would be required by other legislation) or the fields should be made optional.
42. Annexure C (Complaint Form) would appear to introduce a fee for a complaint. This is neither supported by the regulations nor does it seem in the best interests of the industry.

⁷ See <https://www.zadna.org.za/publications/policies-and-legislations/> and/or <https://www.nic.za/za-domains/index.html> for use of the terms “moderated” and “private”.