23 April 2018

.zadna

Attention: Mr Vika Mpisane

Per email: submissions@zadna.org.za

PUBLIC DISCUSSION DOCUMENT: REGISTRATION OF DOMAIN NAMES AT SECOND LEVEL OF .ZA

1. ISPA refers to the Public Discussion Document titled "Registration of domain names at second level of .za (Second Level Registrations or Private Use SLDs)" ("**the SLR Discussion Document**") published on 12 February 2018 and the invitation from .zadna to ISPA and its members to make written submissions.

2. ISPA appreciates both the invitation and the generation of debate regarding optimal use of domain names within the South African context.

3. In response to the invitation ISPA has circulated the SLR Discussion Document and the accompanying questionnaire to all of its members. Members were also given a presentation on the Discussion Document and a chance to discuss it at an ISPA General Meeting held in March 2018.

4. ISPA members have made submissions to ISPA which have been collated and reflect below.

5. ISPA has elected not to respond directly to the questions raised in the SLR Discussion Document, choosing rather to set out a series of broad submissions below.

Scope of the Discussion Document

"The purpose of this Second Level Registrations Public Discussion Document is to solicit feedback about what should be the best possible approach/es to implement SLRs. The Document seeks to solicit feedback about key areas that are critical to the feasibility and implementation of SLRs. The feedback obtained from this consultation will help ZADNA make suitable decisions that should support the success of SLRs in .ZA.

The Document must not be construed to be a certain guarantee or undertaking that ZADNA will definitely implement SLRs in the near future. Instead, the feedback to this Document will help ZADNA

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determine if the SLRs should be implemented, and if so, determine the best approach in implementing them."[1]

6. **Is this a process to decide whether to allow SLRs or a process around how best to implement a decision that has been made to allow SLRs?** The two paragraphs quoted above provide conflicting answers to what is a fundamental question and this confusion runs throughout the Discussion Document.

7. Further, ISPA has noted publication by .zadna on 12 April 2018 of a "Request for Expressions of Interest: Provision of Registry Services: .ZA Second Level Registrations".

8. ISPA believes that it is procedurally unfortunate that this Expression of Interest has been published prior to the conclusion of the SLR Discussion Document process. Further, this seems to indicate that a decision has already been made to proceed with allowing SLRs, leaving ISPA unsure of the utility of questions such as whether the respondent supports or opposes the introduction of SLRs in South Africa.

The status quo is working

".co.za has earned a reputation for being a well-managed namespace with clear background and meaning. Entities registered under .co.za are typically business entities actively trading in South Africa. There are relatively few abused domains (eg registered specifically for spamming or phishing). We recommend to our customers to use this domain space if they wish to be identified as a South African company. While there is congestion for available names, it is not nearly as congested as the .com namespace, where one typically needs to join 3 words to create a suitable available name. It is also one of the lowest cost namespaces suitable for our customers.

2) ZACR have managed this namespace responsibly. There have been no major technical failures, data leaks or similar issues. Disputes are managed as well as can be expected given the size of the namespace and there have been no major court cases arising from disputes. Although they are not beyond criticism, we find our dealings with ZACR to be consistent, and reasonable.

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[1] SLR Discussion Document para 2

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They have responded to us when we have had specific issues. They are definitely better than organisations responsible for many of the other name spaces where we have registered domains for our customers."

9. This excerpt from a member submission reflects the view held by ISPA members that the current system – while not perfect – is stable and working.

10. The National Comprehensive ICT Policy White Paper ("**the White Paper**") notes that "South Africa has a vibrant Internet management regime consisting of a secure and stable .za domain namespace with a little more than a million registered names"[2] and that there is healthy competition in the provision of registry services from local and international operators. ISPA supports this statement which continues to hold true, noting that under the current structure there has been no significant downtime of the .za ccTLDs and its SLDs and no reported security compromises.

11. Within this context and noting the potential risks of adopting SLRs in South Africa as well as the cost of mitigating against those risks and providing the necessary infrastructure and resources, ISPA submits that a convincing case for the introduction of SLRs has not been made out in the Discussion Paper.

12. Is there really demand for SLRs in South Africa? If this demand does exist is it sufficient to justify the expense and potential disruptive effect of introducing SLRs?

13. The trend is towards use of platforms such as Google and Facebook for an Internet presence. Is demand for domain names in general still growing? Or are we just looking at more and more inventive ways to parcel them to try and stimulate demand?

14. Is there not a degree of an end-fatigue market after the introduction of the .joburg, .capetown .durban and .africa domains?

15. What has changed since the 2010 independent market survey commissioned by .zadna which concluded that there was no demand for SLRs amongst local consumers? Why is .zadna effectively reversing a long-held and recently-affirmed policy position at this time?

16. A related issue is the breadth of the consultation process. It is obvious from local and international experience that corporates, SMME and individual end-users are the most important stakeholders in

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[2] White Paper para 8.12

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decisions of this nature. ISPA is concerned that not enough has been presented from this quarter to evidence its support for introducing SLRs. .zadna is urged to take note of the Australian process around SLRs and the procedural difficulties which are being experienced as a result of a perceived lack of broad consultation.

17. ISPA calls on .zadna to show greater transparency in this regard and to underpin the need for evidence-based regulation through the release of the studies it has undertaken to reach this juncture.

18. Finally, in this regard: According to the White Paper the number of registered .za domain names is "extremely limited" considering South Africa's total population of 54 million[3]. This, with respect, is incorrect as there will never be a 1:1 ration of domain names to people and ISPA is not aware of any investigation to establish the total number of domains registered by South Africans or to establish a realistic target ratio.

Does ISPA support or oppose the introduction of SLRs?

19. ISPA members indicated either opposition to or reservations about the proposal to allow SLRs. In general, there is a view that this may be the right direction to go into but a great deal of further work is required to ensure potential pitfalls are adequately managed.

20. Members raised all of the arguments against SLRs set out in the Discussion Document. The following excerpt reflects this:

I am AGAINST opening .za for general 2ndary level registrations, like "mycompany.za". This will cause confusion in the marketplace and may distract from the reputation that has been built up for .co.za. It may also open a window for abuses like identity theft. This could be exacerbated if the .za registrations are controlled by a new entity with less experience in technical and governance issues than the current .co.za registry.

21. A number of members expressed concern that the introduction of SLRs serves no constructive purpose and would amount to an unnecessary distraction.

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[3] White Paper para 8.12.1

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22. Another concern was that allowing SLRs would create opportunities for unlawful and undesirable conduct. Members noted that the problem of unregulated second level "registries" operated on the back of an SLD has occurred with customers outside of .za with za.org and za.net.

23. Members also raised the potential for widening the scope for phishing and other cybercrimes.

Value Proposition

24. ISPA has noted the various arguments that can be advanced to justify the introduction and implementation of SLRs in .ZA.

25. In line with the general tone of the SLR Discussion Document, this section reflects a clear bias towards allowing SLRs and references a demand for SLRs from end-users. Noticeably, arguments in favour are presented unqualified while those against are presented with counter-arguments to discount them.

26. ISPA has the following comments:

26.1. ISPA is not convinced that the availability of SLRs "will help discourage South Africans from registering outside .ZA, as SLRs will provide a better and more effective naming option". End-users across the world use gTLDs like .com where they want to be perceived to have a global presence or not to be associated with a particular country. The availability of SLRs will not change this.

26.2. The fact that interest in 3LRs is likely to decrease over time is more a reflection of the demand for domain names in general than the utility of 3LRs.

26.3. References to anomalies attributable to historical developments in the management of domain names are irrelevant in the context of potential confusion and unlawful and undesirable conduct enabled by allowing SLRs. The simplification of legacy structures has been ongoing and constructive for some time.

26.4. It is correct that 3LRs can be reserved as matching SLRs for free for a definite period to meet concerns about intellectual property infringements and arguments that .zadna and registrars will benefit unduly from the reservation of SLRs that match current 3LRs. It is also the case that this would increase the percentage of non-paying registrants for the fixed period while the cost

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of the infrastructure and resources needed to maintain SLRs would not be covered for that period.

27. ISPA notes and agrees to an extent that recognised challenges "*can be managed and addressed through well-thought implementation plans*". Such plans should be debated and finalised prior to any implementation of SLRs in South Africa.

Impact on 3LRs

28. ISPA refers to section 5 of the SLR Discussion Document.

29. ISPA strongly opposes destabilisation of the existing namespace through either a freeze on registration of new 3LRs or any pricing incentive designed to promote SLRs over 3LRs.

30. Not allowing further 3LR registrations would be hugely disruptive to end-users and reduce end-user choice.

Where should the focus be?

31. Members opposed to the introduction of SLRs argued that the focus should be on strengthening the existing system and the value proposition of a co.za domain name over a competing gTLD. If the drive is to have more use of .za at the expense of gTLDs, then this would not be achieved by fracturing existing demand as opposed to ensuring a compelling and competitive local offering.

    Please do not do SLRs. We don't need them, we need more options for 3LR. Imagine a world where we can get .alt.za, .art.za, .farm.za, .hobby.za, .cape.za, gp.za, .kzn.za, etc. The options are infinite and can be cheap and abundant.

32. Registration figures support this view, with .co.za registrations remaining robust despite the release of new gTLDs.

    The best thing we can do at this stage, to maintain and grow a resilient and competitive ccTLD, is to introduce certainty in the regulatory and policy spaces. The .ZA namespace represents an entire integrated ecosystem of registries, registrars, resellers, registrants and the public, each one having made some form of investment in the success of the namespace. We believe that policy and regulatory certainty will encourage further investment, innovation and growth in .ZA

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33. One member proposed the following:

There may be a case for new 2nd level domains. For example to target individual names, such as .person.za. Each of these should be considered on its merits.

There may be a case for an additional commercial name-space, eg .com.za to operate in competition with .co.za and provide an alternative to companies that cannot find a suitable available name under .co.za.

There may be a case for an alternative Registry to ZACR to operate in competition with ZACR. Such a registry could be charged with managing alternate name-space as suggested in (4) and (5).

One more suggestion.

Create a new 3rd level namespace, such as ".cert.za". Couple this with a Certification Authority. Thus if I register "mydomain.cert.za" my identity will be verified by the registry. Then the CA component of the registry will sign SSL certificates for my domain and all sub-domains.

- *As a company, I get a single packaged solution for my name, my IP space and certification for all my domains, email, servers etc. Presumably all my servers will support SSL encryption.*
- *As an end user, if I have any dealing with a mydomain.cert.za entity, I know who it is, what it is and that all my communications are secure.*

In today's world of identity theft and phishing it may raise the barrier. It might provide a better market opportunity for those trying to push SLRs.

If SLRs go ahead, the existing reputation of .co.za, .org.za, .net.za etc will be destroyed and the possibility of a future .cert.za will be totally undermined.

34. Another member was of the view that – if .zadna was to proceed to allow SLRs – then the focus would need to be on managing a transition and mitigating the inevitable land grab. It was essential that these mitigation plans be kept as simple as possible and that they were practically attainable by end-users including SMMEs and individuals.

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Even if the eventual plan is to do away with the unmoderated ccSLDs (org.za, co.za, etc) there will always be merit in retaining moderated second level domains. This is good for protection of the public -- when I go to capetown.gov.za I trust that the moderator has done their job and the site legitimately represents a government entity; I have no such certainty when I go to capetown.za There should be some predefined precedence for conflicting existing ccSLD registrations. I'm wary of prioritising co.za as their document suggests because it means the rights of those in moderated domains may be ignored.

To reduce the confusion with moderated ccSLDs I think transpositions of those domains should be restricted. (i.e. nobody should be able to register ca.za, oc.za, nte.za, etc). I've plenty of logs that show these typos are common, and thus we run the risk of making it easy for phishing.
To ease the transition, maybe there should be an embargo on all two- and three letter registrations, save perhaps for legitimate existing 3LDs being re-registered, for a period of two years.

Provision of registry services

35.   ISPA has no difficulty with competition in the provision of registry services where this is supported by demand and other considerations. Any process to attract competition must, however, ensure that the security and stability of the local namespace is the top priority.

Legal and policy considerations

36.   ISPA concurs that it is unfortunate that more has not been done to amend Chapter X of the Electronic Communications and Transactions Act 25 of 2002 ("**the ECT Act**") and acknowledges the historical developments underpinning the current structure for domain name governance and management in South Africa.

37.   It is in all stakeholders' interests that there is a clear legislative framework and all parties should express their concerns to the Department in this regard.

38.   ISPA agrees that .zadna would need to amend its General Policy in order to remove the explicit prohibitions set out therein.

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39. The concern here is that the General Policy only came into effect three years ago, in April 2015. The value proposition for effectively reversing recent policy should be compelling if there are not to be adverse consequences for certainty in the market.

40. ISPA has noted media reports relating to a dispute between .zadna and ZACR and there are numerous passages in the SLR Discussion Document which reflect animosity towards ZACR. ISPA urges .zadna to ensure that the interests of end-users and broader socio-economic benefits are placed above short-term considerations relating to the relationship between .zadna and ZACR.

Impact of the ICT Policy White Paper

41. As a general comment, ISPA's view is that it would be premature to treat the ICT Policy White Paper as if it were cast in stone or embodied in enacted legislation. The history of the passing of the ECT Act and other legislation in the ICT sector very clearly indicates that implementation of policy is haphazard.

42. The SLR Discussion Document states that there is an argument arising out of the White Paper "*against using ZACR or another party as registry operator for SLRs, and the argument emanates from the stipulations of the Integrated ICT Policy White Paper. The White Paper already stipulates that all .ZA SLD registry functions will be transferred to the new (Integrated) ICT Regulator that is yet to be established.*"[4]

43. Further:

    "*There is therefore not much justification for ZADNA to continue contracting out SLR registry functions to another entity that will soon be required to transfer such functions to the new Regulator.*"[5]

44. ISPA's current information is that the Department of Telecommunications and Postal Services is seriously considering deferring or deviating from implementation of the policy requiring the replacement or reconstitution of ICASA. This is a direct result of the delays in implementation of other policy interventions which would be inevitable if ICASA is to be replaced and the realisation that this is simply not affordable.

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[4] SLR Discussion Document para 7.8, p31
[5] SLR Discussion Document para 7.8, p31

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45. Even if the Department were to proceed with the introduction of the mooted ICT Sector Commission and Tribunal Bill, the process to finalise and implement this legislation will not be completed before 2023.

46. It is therefore not correct to anticipate that any transfer of functions to a regulator replacing ICASA will happen "soon": it is far from certain that it will happen at all.

47. As regards the White Paper, ISPA wishes to highlight the following provisions which are also relevant to the SLR Discussion Paper"

   47.1.   A key challenge identified in the White Paper is the need to reduce the costs of registering domain names in South Africa[6]. This is logically the most effective way to increase the number of local registrations. A key question for the current process is therefore what it will do to reduce registration costs if anything at all?

   47.2.   One of the objectives of the policy in the White Paper is to "protect South African geographic, cultural, heritage and public interest domains from commercial or other exploitation". ISPA believes that the introduction of SLRs has the potential to make achieving this objective significantly more difficult.

Conclusion

48. ISPA extends its appreciation to .zadna for its consideration of these comments, and trusts that they will be of assistance in finalising this process.

49. ISPA wishes, however, to reiterate its concern about the scope of this exercise and the procedural difficulty which arises out of the presentation of the introduction of SLRs as a *fait accompli*.

50. ISPA submits that .zadna should undertake a full regulatory impact or socio-economic assessment reporting process to ensure that its decisions are properly informed. Such studies will also act against the perception that the current process is motivated by political and other considerations which are not linked to the welfare and interests of consumers.

51. It is further critical that South Africa align itself with international trends and developments so that we ensure that we do not become isolated through our decisions around domain name management.

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[6] White Paper para 8.11.2.1

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52. ISPA and its members have a clear and direct interest in the further conduct of this process and look forward to further engagement with .zadna in this regard.

Regards,

ISPA Regulatory Advisors

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