



Ministry of Economic Affairs

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Date - 05 DEC. 2012 -

Re Last resort redelegation scenario .nl domain

Dear Mr. Crocker,

In 2008 the registry of the .nl-domain, Stichting Internet Domeinregistratie Nederland (SIDN) and the Ministry of Economic Affairs (government), signed a covenant to strengthen the stability and continuity of the .nl-domain. One of the actions they committed to was the establishment of a 'last resort redelegation scenario'. This scenario has been developed to cope with a major and irreversible disruption of the service of SIDN with regards to the .nl domain. It describes temporary measures to ensure that the continuity of service of the .nl-domain is as less affected as possible by such a disruption and it further provides for an effective preparation of the then necessary redelegation of the domain.

We, SIDN and the government request the board of ICANN to take note of this scenario and to underwrite the need for both IANA and ICANN to act quickly and effectively in case of an emergency redelegation, one of the possible measures named in the scenario. In particular, we request the board to acknowledge that decisions on an emergency redelegation have to be made in such a short timeframe that the national registry and the government jointly or, under the specific circumstances described in the scenario, the government independently, should have the authority to make such decisions as they deem necessary, in line with the GAC Principles for the Delegation and Administration of Country Code Top Level Domains and respecting the principle of subsidiarity.

Furthermore, we request the cooperation of ICANN staff and Board along the lines described in this scenario should the effectuation of this scenario become necessary. Many cases<sup>1</sup> show that ICANN cooperates successfully with all parties concerned to make sure that an emergency redelegation unfolds effectively and to the satisfaction of all parties involved. We hope for an equally constructive role by ICANN in the event of an emergency situation in the Netherlands.

To be clear; the .nl domain is regarded as a highly reliable and stable domain and it is very unlikely for a major disruption to happen. Nevertheless, given the importance of the domain for the Dutch economy and society, the government

<sup>1</sup> e.g. the redelegation of the .au domain in 2001



and SIDN consider it important to be prepared for even such an extremely unlikely situation.

#### Rationale

The .nl-domain has been successfully administered by SIDN since 1996 and has grown to be one of the largest ccTLDs in the world, with approximately 5 million registered domain names. The .nl-domain has a market share of approximately 70% of all domain names used in the Netherlands and it has been recognised as one of the world's most secure top-level-domains<sup>2</sup>. With the successful growth of the .nl-domain, the economic and societal importance of the domain for the Netherlands has grown as well, triggering the government and SIDN to start a dialogue on possibilities to strengthen the stability and continuity of the .nl-domain.

The result of this dialogue has been a covenant, signed in 2008, in which SIDN is reaffirmed as a capable and responsible registry for the .nl-domain, and the government is confirmed to have a special interest in the stability and the continuity of the .nl-domain. The covenant is accompanied by a report that SIDN and the government have agreed upon and which outlines a number of specific technical, organisational and legal measures that have been taken or will be taken to strengthen the .nl-domain. It was also agreed upon that an 'early warning' system is put in place that ensures that parties will keep each other informed on possible threats and policy decisions that affect the .nl-domain.

A key issue that is addressed both in the report as well as in the covenant is a 'last resort redelegation scenario'. This scenario has been developed to make sure that in the event of a major and irreversible disruption of the service of SIDN with regards to .nl, there is a scenario in place that ensures the continuity of service of the .nl-domain and provides for an effective redelegation of the domain.

Looking forward to your reply on this matter.

Yours respectfully,

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Annex: Last resort redelegation scenario .nl domain

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<sup>2</sup> [http://us.mcafee.com/en-us/local/docs/MTMW\\_Report.pdf](http://us.mcafee.com/en-us/local/docs/MTMW_Report.pdf)





## **Annex: Last resort redelegation scenario .nl domain**

### **1. Background**

Since 1996 the .nl domain has been very successfully administered by SIDN (Stichting Internet Domeinregistratie Nederland). During this time, the .nl domain has developed hugely. From 9,614 domain names in 1996, the number of domain names has grown to a current tally of approximately 5 million, making it one of the most-used country domains in the world. With the increase in the number of users of .nl domain names, the economic importance of the domain for the Netherlands has similarly grown. This development prompted the Dutch government to enter into talks with SIDN about safeguarding the continuity and stability of the .nl domain.

These talks resulted in the signing in 2008 of the "Covenant Safeguarding the .nl domain" (hereafter referred to as the Covenant), in which two important matters were agreed. First, the Ministry of Economic Affairs (hereafter referred to as the government) recognised that SIDN successfully performs its role of registry of the .nl domain in a self-organising and self-regulatory manner, and that it effectively assures the continuity and stability of the .nl domain, as far as this lies within its own power. Second, the Covenant affirmed that the government has a special interest in the continuity and stability of the .nl domain. Given this special interest, it was agreed that the government would prepare itself for a possible involvement in a redelegation process, should this ever become necessary.

### **2. Trigger-point and launch of the redelegation procedure**

The scope for possible involvement of the government in a redelegation process is broadly outlined in Annex B of the "Final Report on Safeguarding the .nl domain". This Annex lays out how a last resort redelegation process following a major and irreversible disruption of the services of SIDN should be conducted. In the Covenant it was agreed that the government, in co-operation with SIDN and other relevant parties, would in accordance with Annex B draw up a roadmap to implement such a process as quickly and efficiently as possible.

The government and SIDN have agreed that, in the event of a major and irreversible disruption to SIDN's services to the .nl domain, it might become necessary for the government to become involved to remedy this disruption. However, a large number of measures have already been taken following the signing of the Covenant to prevent such a disruption from occurring in the first place. These measures consist of a number of technical and organisational procedures that SIDN and the government have taken or will take to keep the risks of a disruption to an absolute minimum. SIDN and the government consult on a regular basis, and an "early-warning" arrangement has been put in place whereby both sides commit themselves to flag up possible risks and policy proposals in a timely fashion to the other party.

In the most extreme case — an actual major and irreversible disruption to SIDN's services — two sequential determinations must be made: first, what is the cause of the disturbance, and in particular whether the disturbance can be attributed to the registry; and second, what government response is appropriate after this has been determined, i.e. should the government intervene to support the registry or should a redelegation process of the .nl domain be started.

If it is determined that the disruption is attributable to the registry and that redelegation is deemed necessary, this is referred to as a trigger-point. A trigger-point marks the moment of transition from a stable phase, in which the registry functions normally, to an unstable phase, in which the registry no longer functions adequately or does not function at all. Determination of a



trigger-point will be done in close consultation with the registry, as stated in Annex B. Annex B also lists the qualifying criteria that apply in determining a trigger-point.

These qualifying criteria are:

- severe macroeconomic damage which is attributable to the quality of service provided to the Local Internet Community (LIC), or there is a present and credible threat of such; and
- that it is apparent that the situation will endure for some time; and
- that there is some degree of finality, in the sense that the situation cannot be repaired within a foreseeable amount of time so that service to the LIC will not suffer serious or lasting damage.

One of the following two circumstances should also be applicable to the situation;

- there is some degree of accountability or culpability on the part of the registry; or
- there is some structurality in the defect, i.e., the defect is not an isolated incident.

As already mentioned, a trigger-point will be determined in consultation between the government and SIDN. Should a dispute arise between the government and SIDN on whether a trigger-point has been reached, three successive steps are to be taken:

1. internal escalation to the Director-General for Energy, Telecom and Markets of the Ministry of Economic Affairs and the SIDN Board;
2. any possible mediation efforts; followed if necessary by
3. determination of a court order (potentially, an injunction) on the dispute.

In the case that a trigger-point is determined and a redelegation process is consequently started, there are three conceivable starting points for this process:

1. the government and SIDN agree that a trigger-point has been reached;
2. the court has determined that a trigger-point has been reached; or
3. SIDN has ceased to exist.

Before a redelegation process is launched, however, two alternative options should be weighed up that could be followed subsequent to a trigger-point.

1. The registry and government have included in Annex B the option that the government, using other measures, would provide for the relaunch of the registry, rendering redelegation unnecessary.
2. It might be possible in the future that the .nl domain has become less socially and economically vital at the time the trigger-point occurs. In this case the option of gradually closing down the .nl domain should also be considered.

### **3. Redelegation process**

The start of a redelegation process will be preceded by an extensive process in which the government and the registry will have collaborated to prevent such redelegation ever becoming necessary. Measures to be taken to this end are described in the Final Report on Safeguarding the .nl domain, whose implementation ought to have reduced to a minimum the chance of a trigger-point occurring. The start of a redelegation process is therefore a measure of last resort that the government and the registry would take to protect the .nl domain.

Next to the Local Internet Community (LIC), as user of the .nl domain, there are crucial stakeholders to be involved in a redelegation process. These are, in addition to the registry and the government, the Internet Corporation for Assigned Names and Numbers (ICANN) and the Internet Assigned Numbers Authority (IANA), as managers of the DNS root zone.



In the case that a trigger-point is determined and a redelegation process is consequently started, the redelegation process of the .nl domain will consist of the following steps:

1. The government ascertains itself of the need to place the Name Server Function (NSF) into the hands of an interim registry (caretaker) to warrant the availability of the .nl-domain for its users during the period necessary to complete the redelegation process.
2. The government starts, if necessary, searching for a caretaker to temporarily take over the function(s) of the registry.
3. The government informs ICANN, IANA, the LIC, interested governmental stakeholders, the administrators of the secondary .nl name servers and the .nl registrars of the situation that has arisen and the start of a redelegation process.
4. The government issues a Call for Candidates for the new registry.
5. The government presents, if necessary, the caretaker's credentials to IANA in order to grant the necessary authority to the caretaker to make name server changes to the .nl domain.
6. IANA awards the delegation to the caretaker.
7. The government facilitates the handover of the NSF and the zone file for the .nl domain to the caretaker.
8. The government assesses whether a handover of the Data Entry Function (DEF) and the registration policy is necessary. If this proves to be the case, the government facilitates this handover.
9. The government organises a (pre-)selection for the vacant position of the .nl registry and opens a consultation with the LIC on the acceptability of the preferred candidate.
10. The government presents the successful candidate to ICANN/IANA.
11. ICANN/IANA awards the delegation to the new registry.

The division of the procedure into these steps is to some degree an artificial construction. In reality, a number of steps will need to take place simultaneously for the procedure to be applied effectively.

Below these steps are elaborated further. The descriptions of these steps, however, contain only a limited amount of details since it is uncertain what the exact circumstances will be in which they will have to be taken and therefore their implementation requires a certain amount of flexibility. Since it is highly unlikely that redelegation will become necessary in the near future, it is hard to image in which context these steps will have to be taken. For that reason it is also necessary to review this roadmap every few years to make sure the procedure is kept up to date.

#### **4. Detailed process description**

##### 1. Determining the necessity of temporary takeover by a caretaker

It is likely that, following a trigger-point and the instable situation to which it follows, the Name Server Function and potentially other functions can no longer be performed by the registry and must therefore be taken over by a caretaker. The government will nevertheless ascertain that handover of the NSF, and possibly other functions, is absolutely essential. If it is indeed deemed necessary, the government will proceed to carry out steps 2 to 10. If, however, the registry is still deemed able to perform the NSF and other functions pending the determination of a new registry, the government will continue with steps 3, 4, 8, 9 and 10.

##### 2. The search for an interim registry (caretaker)

If it is concluded that the registry is no longer able to carry out the NSF, the government will take action to ensure that the operation of the NSF, and possibly other functions, is temporarily taken over. To this end, the government will appoint an interim registry (caretaker) which will perform these functions. The first parties that will be approached with a view to carrying out



this caretaker function will be the secondary .nl name server managers. To ease this process, a list of contact persons at the secondary name servers is maintained by the registry so that they can be reached quickly in case of an emergency.

### 3. Informing stakeholders

Once a trigger-point has been confirmed, and it has also been determined that the NSF can no longer be performed by the registry, the government will inform all stakeholders of the arisen situation and the start of a redelegation process. Through direct contact with ICANN, IANA, the secondary .nl name server managers and interested governmental stakeholders, these parties will be informed of the start of a redelegation process. The .nl registrars and the rest of the LIC are also to be informed of the start of a redelegation process.

### 4. Issuing a Call for Candidates for a new registry

At the same time that stakeholders are informed that a redelegation process has been started, the government will issue a Call for Candidates for a new registry. In this call for tender, the government lays down a preferred profile outlining the criteria that it would like the new registry to meet (see section 5). The call for tender will contain a time limit within which parties may submit their candidacy.

In the call for tender, the government will also indicate its preference that the LIC put forward a joint preferred candidate or at least a candidate that has wide support within the internet community. This would significantly speed up the redelegation process, and it will ensure a stable basis for the new registry within the community. The government would in such a case also no longer be required to issue a consultation requesting the LIC's approval of the nomination of the registry candidate, further helping to shorten the redelegation process.

### 5. Presenting the caretaker to the IANA

Having found a suitable caretaker, the government will submit it to IANA so that the caretaker can obtain authorisation to make name server changes to the .nl domain.

### 6. IANA awards the delegation to the caretaker

IANA will assess this application based on a number of stipulations<sup>3</sup> and awards the delegation (temporarily) to the caretaker

### 7. Handover of NSF to caretaker

Once IANA has accepted the authorisation of the caretaker, the caretaker will proceed with the actual operation of the NSF. The government, in co-operation with the registry if necessary, shall ensure that the caretaker has all the necessary resources at its disposal for it to undertake the NSF effectively at the earliest possible time. Both physical and legal resources, such as IP rights, should be taken into account in this regard.

### 8. Decision on the possible handover of DEF and registration policies to the caretaker

Based on an estimate of the amount of time the final transfer of the .nl domain to a new registry is likely to take, the government will decide whether it is necessary for the caretaker to also take over the Data Entry Function (DEF) and registration policy. This decision will depend on the expected time needed for redelegation, given that handing over the DEF would be a complex and potentially costly undertaking. Given that the (temporary) loss of the DEF would constitute a less direct threat to the continuity of the .nl domain, compared to the loss of the NSF, and since loss of the DEF in the short term would inflict less significant social and economic damage, handover will occur only if the expected duration makes such a handover necessary. If

<sup>3</sup> <http://www.iana.org/cctld/nameserver-change-requests-09may01.html>





it is decided that handover of the DEF and the registration policy is necessary, the government will facilitate this transfer.

#### 9. (Pre-)selection of candidate and consultation with LIC

In the event that the LIC fails to put forward a joint preferred candidate, the government will, once the term set in the call for tender has expired, select a preferred candidate that it considers best suited for the role of .nl registry (based on its preferred profile). Obviously, the selection of this candidate must be transparent and for this reason the names of those who have submitted their candidacy will be published by the government, together with an initial assessment by the government of these applications.

Once the government has selected a preferred candidate, it will arrange a public consultation in which it justifies why it has chosen this particular candidate, and in which it seeks the LIC's approval to present the preferred candidate to IANA. In order to maximise the response to this consultation, and in order to safeguard the transparency of the entire redelegation process, the government will, simultaneously with the call for tender, announce a timetable indicating when the registry candidate will be introduced to the LIC and when the consequent public consultation will be brought to an end.

#### 10. Presentation to ICANN/IANA

Depending on the outcome of the consultation, the government will present the candidate to IANA.

#### 11. ICANN/IANA awards delegation to the new registry

Following the nomination, ICANN and IANA will, acting in accordance with their procedures, award the delegation of the .nl domain to the new registry. In doing so, the government, inasmuch as it lies within its own abilities and responsibilities, will support both ICANN and IANA, as well as the new registry, in the timely handover of responsibilities relating to name server changes, the NSF, the DEF and the registration policy.

The ICANN/IANA procedure for redelegation is described in ICP-1 and RFC 1591. This consists of six steps:

1. The entity applying for redelegation (i.e., the registry-designate) submits to IANA Root Management<sup>4</sup> its template<sup>5</sup> demonstrating: comprehensive contact details; approval by the LIC; the applicant's capabilities; the applicant's legal documentation; and, if applicable, approval by the government.
2. IANA examines the documents submitted.
3. IANA confirms redelegation to the persons named.
4. IANA submits a report for approval by the ICANN Board.
5. IANA requests approval from the U.S. Department of Commerce.
6. The new delegation-holder verifies the changes.

The redelegation process is complete once approval is obtained from the various entities and the handover of all technical and legal requirements to the new registry has been completed.

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<sup>4</sup> root-mgmt@iana.org

<sup>5</sup> <http://www.iana.org/domains/root/tld-change-template.txt>

## 5. Preferred profile for the .nl-registry

This section describes the profile outlining the requirements that the government would like the new registry to meet, when the government issues a Call for Candidates for a new registry (see chapter 4).

The characteristics that the government expects to see in a new registry are based on the current model of self-regulation practiced within the internet sector. This model is based on self-organisation, strict separation of registry and registrar operations, and a not-for-profit and cost-conscious service delivery. In addition, the government, given its concern for continuity and stability of the .nl domain, will wish agreements to be made in the spirit of the existing Covenant between the government and the current registry.

The government would like the new registry of the .nl domain to meet the following requirements:

- the registry is subject to Dutch law, and Dutch law is applicable to all contracts with registrars relating to the .nl domain;
- with regard to the .nl domain the registry undertakes no commercial activities that compete with the activities of registrars and registrants;
- the registry has no commercial interests in activities of registrars and registrants relating to the .nl domain;
- the registry is impartial with respect to registrars and is independent of registrars;
- the registry extends to all registrars transparent and non-discriminatory access to its services;
- the registry maintains cost-based tariffs for the registrars;
- the registry will keep the .nl domain permanently linked with Dutch society, and will aim in so doing to keep the .nl domain consistently available to users in the Netherlands;
- the registry will, as far as its provision of the .nl service is concerned, remain permanently based in the Netherlands, both in terms of its articles of association and in actual fact.
- The registry will respect the then existing naming policy of .nl.

Furthermore, a new registry must commit itself to RFC 1591 and ICANN's ICP-1, in which it is stipulated (*inter alia*) that:

- the registry is administrator of the domain and has a duty to serve the internet community, where it is not befitting to be concerned about "rights" or "ownership", but rather about "responsibilities" and "being of service";
- the registry must treat all users of the domain equally;
- the registry must enjoy the confidence of significant stakeholders in the domain;
- the registry performs the management of the DNS service in a technically competent manner.

Finally, the registry must meet the minimum technical registry requirements that the IANA demands of a registry.