.zadna

Public Discussion Document

REGISTRATION OF DOMAIN NAMES AT SECOND LEVEL OF .ZA ("Second Level Registrations or Private Use SLDs)

12 February 2018

Deadline for submissions: 17h00 on Monday, 16 April 2018

Table of Contents

Definitions

Terms and Definitions in *italics* denote terms extracted from the Electronic Communications and Transactions Act 25 of 2002 Act.

Unless otherwise stated, the rest of the Terms and Definitions are extracted from the .ZA Second Level Domain General Policy.

"3LR" means a Domain Name registered immediately below an SLD;

"ccTLD" *means country code domain at the top level of the Internet's domain name system assigned according to the two-letter codes in the International Standard ISO 3166-1 (Codes for Representation of Names of Countries and their Subdivision);*

"Charter" as a noun means the 'constitution' of a Second Level Domain, specifying, *inter alia*, the purpose and nature of the Second Level Domain, the criteria for registration of domain names within the Second Level Domain, and the manner of administration of the Second Level Domain; as a verb means the establishment of a Charter for a Second Level Domain, which process is completed upon approval of the Charter by ZADNA.

"Domain Name" *means an alphanumeric designation that is registered or assigned in respect of an electronic address or other resource on the Internet;*

"gTLDs" means generic Top Level Domains;

"Private Use SLDs" mean agric.za, grondar.za and nis.za, which were assigned to certain persons for private use prior to ZADNA assuming responsibility of managing and regulating .ZA (in this document, Private Use SLDs also means any new SLDs that may be delegated as SLR and for private use in the future);

"Registrant" means a holder of a Domain Name;

"Registrar" means an entity that is authorised by ZADNA in terms the Act or that is accredited by a Registry to register Domain Names and update Registry Data on behalf of Registrants in an SLD;

"Registry" or **"Registry Operator"** means an entity authorised by ZADNA to manage and administer a specific SLD, including the provision of primary and secondary name servers and WHOIS servers in relation to the relevant SLDs;

"Second Level Domain" or **"SLD"** *means a sub-domain immediately following ZA;*

"SLR" means an SLD registered at the second level of .ZA with or without a Charter, and that is intended for private use;

"TLD" means Top Level Domain; and

"ZADNA" means the .ZA Domain Name Authority.

1. INTRODUCTION AND PURPOSE

The ever-changing landscape of the Internet and its domain name system require domain name value chain participants – especially domain regulators and managers such as ZADNA – to regularly assess the competitiveness, security and resiliency of their namespaces. While nothing, at least in the last decade, has significantly challenged the security and resiliency of the .ZA namespace, the competitiveness of the namespace (through different registration options) has been questioned from time to time.

In particular, some of the .ZA domain name registration value chain players point out that the delegation of hundreds of new ICANN top level domains (gTLDs) into the root zone of the Internet makes it more attractive for domain name applicants and holders to register domain names as close to the Top Level Domain (TLD) as possible. That is, yourname.tld is more interesting than yourname.co.tld.

Amongst others, some registrars and domain name applicants have argued in favour of allowing registrations directly under a ccTLD (country code Top Level Domain). Such a registration model is prevalent in gTLDs (generic Top Level Domains) such as .com, .org and .net for decades. It is also well-established in a number of ccTLDs such as .ca (Canada), .fr (France, .de (Deutschland/Germany), .nl (Netherlands) and .us (United States).

In the recent past, acceptance of Domain Name registrations at the second level of .ZA has been strengthened by the recent SLR (Second Level Registration) implementations in .uk (United Kingdom), .nz (New Zealand) and .ke (Kenya). In all these cases, the main motivations for implementing SLRs include:

(a) The increasing need to meet changes in online naming conventions resulting from increasing interest in acquiring shorter Domain Names that support faster navigation.

(b) The increase in gTLDs (following ICANN accepting around 1 300 new gTLD applications between 2012 and 2014). gTLDs offer SLRs that support better brand visibility as Domain Names appear higher up than at the 3rd level.

(c) The fact that brands, cultures and geographies can obtain their own gTLDs from ICANN in the near future further justifies the need for SLRs in ccTLDs as a measure to counter this need at the local level and to discourage domain name holders from acquiring their individual TLDs from ICANN.

For example, in South Africa, Multichoice was able to secure rights to launch .multichoice, .dstv, .mnet, africamagic, .supersport and more other brand gTLDs. MTN was also able to secure rights to launch .mtn. Having more local brands acquire their own TLDs in the future is likely to stifle the growth of .ZA Domain Name registrations.

Requests for SLRs or Private-Use Second Level Domains (PU-SLDs) is nothing new for .ZA. In fact, ZADNA has regularly received numerous requests for SLRs or PU-SLDs for more than a decade. Some of the interested parties pointed out that Private-Use SLDs in .ZA pre-date the establishment of ZADNA. Some of the current PU-SLDs that were delegated before ZADNA's establishment include agric.za, grondar.za and nis.za.

ZADNA has done substantial assessment in the last year determine the feasibility of SLRs in .ZA, and is convinced that SLR implementation is likely to support the competitiveness of .ZA and enable .ZA to meet the changing online naming needs. However, ZADNA has not, to date, conducted any comprehensive consultation about SLR feasibility and (especially) about a sustainable manner of implementing SLRs in .ZA.

2. PURPOSE OF 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 determine if the SLRs should be implemented, and if so, determine the best approach in implementing them.

Parties giving feedback are encouraged to directly answer the questions asked in this Document or to use the questions as a guide to their feedback. In either case, submitting parties are also encouraged to raise other issues that they find worthy of consideration, which may not have been raised in this Document.

Submitting parties must email written inputs to submissions@zadna.org.za **no later than 17h00 on Monday, 16 April 2018.** All submissions will be considered and utilised in finalizing SLR implementation plans.

3. RECENT SLR EXPERIENCES

Our preliminary assessment has so far shown that although the new gTLDs are yet to significantly challenge the dominance of .ZA in South Africa, there is a substantial interest in the provision of shorter URLs. The idea of allowing second level registrations (SLRs) has been received as an enabling measure to satisfy this interest, and to restrict the potential competition that new gTLDs may present to .ZA.

The interest in SLRs amongst country code Top Level Domains (ccTLDs) that only offered third level registrations (3LRs) has been gradually growing since 2010 (and especially after the delegation of new gTLDs in 2012).

3.1. Colombia (.co)

The .co ccTLD launched SLRs in 2011 (prior to the new gTLDs) and experienced great success, as around 1 million SLRs were registered within 12 months of their launch (in fact, more than 500 000 SLRs were registered in the first 30 days). The .co SLR growth far surpassed the number of 3LRs at the time (.co 3LRs were reported to total a little less than 30 000 in 2011 when .co SLRs were launched).

3.2. United Kingdom (.uk)

United Kingdom (.uk) introduced SLRs in 2015 in addition to existing SLDs such as co.uk and org.za. The .uk ccTLD has had a different SLR growth rate. In our interview (October 2017) with senior leadership of Nominet (the .uk registry operator), it was reported that there were around 1.5 million SLRs since .uk SLRs were launched almost 3 years ago.

This SLR growth figure amounts to around 13% of the total number of .uk 3LRs (around 11 million in June 2017). This shows that .uk SLR growth has been as fast as that of .co SLRs. Of course, the comparison may not be sufficiently sound because .co SLRs were launched before new gTLDs whereas .uk SLRs were launched after new gTLDs entered the market.

3.3. New Zealand (.nz)

New Zealand (.nz) introduced SLRs in 2016. The 2017 Annual Report of New Zealand Registry Services (NZRS), the .nz registry operator, shows that of the total of 682 527 3LRs, .nz SLRs accounted for 17.92% (around 122 300 SLRs). Recent checks on the NZRS website (as of 8 November 2017) showed that the total number of .nz registrations stood at 700 519, and .nz SLRs accounted for 132 000 (18.84%) of this total.

3.4. Kenya (.ke)

The Kenya (.ke) SLR initiative was launched in July 2017. There were around .ke 68 000 3LRs at the time of the launch, and so far it is estimated that there are around 5% .ke SLRs to date as of October 2017.

3.5. Australia (.au)

The .au ccTLD is currently finalizing its consultation processes but there is firm commitment to launch SLRs in the cause of 2018. The most recent development was the conclusion of the Request for Information phase during which local and international registry system providers were invited to tender for the provision of SLR registry service.

The consultation process is being finalised following feedback from an earlier round of consultation. In our interaction with the .au ccTLD manager (auDA) in October 2017, auDA was convinced that SLRs in .au are feasible. However, auDA appreciated that SLR implementation needs to be prepared for as thoroughly as possible.

4. ARE SLRS FEASIBLE? VALUE PROPOSITION

4.1. Views in support of SLRs

There are several key reasons that have been provided to justify the introduction and implementation of SLRs in .ZA. The reasons include:

4.1.1. Better online visibility and navigation
SLRs support shorter web addresses: *yourname.za* is "better" than *yourname.co.za* as the former is shorter and allows for faster web navigation and better memorability.

4.1.2. Best practice compliance
The trend of SLRs in ccTLDs has gained significant support and become best practice because gTLDs such as .com, .net and .org all support SLRs (*yourname.com*). Furthermore, a substantial number of ccTLDs have been implementing the SLR model (instead of 3LRs) for years.

4.1.3. Competition from new gTLDs
ICANN "new" gTLDs allow domain name users better domain name options that easily identify and categorize their web presence. Allowing registrations at the .ZA second level will help discourage South Africans from registering outside .ZA, as SLRs will provide a better and more effective naming option.

4.1.4. Changing online naming conventions
The ICANN new gTLD process shows that naming conventions online are changing, with domain name users seeking to be as high up the DNS tree as possible. This development potentially shows that interest in 3LRs is likely to decrease over time.

4.2. Views against SLRs

Not all .ZA value chain players are "sold" to the SLR idea. Some of the reasons provided against the introduction of SLRs are:

4.2.1. Potential confusion

South Africans are used to the 3LR model *(yourname.co.za)*. Introducing SLRs will cause unnecessary confusion in a time when cyber-security and spam challenges are on the rise. Such potential confusion is likely to be exacerbated by the reality that most South Africans are not much "educated" in the dynamics, challenges and dangers of the Internet.

It must be pointed out, however, that the current .ZA SLD structure has its own inherent realities that are confusing to the people. For example, a number of org.za registrations are from individuals and commercial entities – something that goes against org.za's primary target community of local non-profit entities.

Net.za, as well, has a gradually increasing number of registrations that (on the face value) do not seem to have any relation to net.za's primary target audience Internet service and network providers.

The existence of ac.za parallel to edu.za is another area of confusion because some of the entities providing post-matric education feel that they should be able to register their domain names in ac.za instead of edu.za.

The point made here is not that SLRs may not cause confusion, but that even the current SLD structure has its own confusing elements.

4.2.2. Unnecessary duplication

SLRs will not add any much value and will create unnecessary duplications because the holder of *yourname.co.za* will be compelled to also register *yourname.za*. Such duplication is unlikely to bring any material change save that current 3LR holders will be compelled to register matching SLRs at a fee.

4.2.3. SLRs are a money-making scheme

Introducing SLRs is not in demand outside the Registrar (ISP) community. In fact Registrars are only driven by a commercial interest in that "duplicating" the current 3LRs through matching SLRs will generate additional hosting revenue.

In addition, ZADNA likely stands to gain more revenue from the introduction of SLRs, as SLRs may provide ZADNA with additional revenue stream to the current co.za, net.za, org.za and web.za fees.

The argument is, of course, refutable in that current 3LRs can be reserved as matching SLRs for free for a definite period. If that happens, neither ZADNA nor registrars will benefit financially from the reservation of SLRs that match current 3LRs.

4.2.4. Compromise of intellectual property rights

SLRs will provide unnecessary challenges to the protection of intellectual property rights. For example, what if another party registers zadna.za ahead of ZADNA when ZADNA is an established "owner" the brand "ZADNA" (and already holds zadna.org.za)?

Notwithstanding the views against SLRs, ZADNA's preliminary conclusion (mainly through observing SLR roll-out in .uk, .nz, .ke and .co) is that the challenges explained above can be managed and addressed through well-thought implementation plans. However, caution should still be exercised because there may still be more convincing reasons against SLR implementation and/or against particular implementation approaches.

FEEDBACK QUESTION 1:
(a) Do you support or oppose the introduction of SLRs? Please give reasons.
(b) If you do not support SLR implementation in .ZA, do you have any suggestions about other innovative means that could be implemented to enhance the competitiveness of .ZA while maintaining the current 3rd Level Registration model?
(c) Are there any other specific benefits or problems that SLRs can bring that ZADNA should be mindful of in implementing SLRs?

5. WHAT ABOUT 3LRS IF YOU IMPLEMENT SLRS?

Those in support of SLRs argue that the implementation of SLRs in .ZA should be such that it does not "kill" the 3LR model; instead SLRs should simply be an alternative or an addition to 3LRs. This means that domain name applicants and holders will be free to choose between 3LRs and SLRs, and to even register both.

5.1. Preferential Treatment of 3LRs

The recent .uk, .nz and .ke experiences show that current 3LR holders can be given a first-move advantage by allowing them an opportunity to either register or reserve (for free) their 3LRs as SLRs before SLR applications are open to new applicants. This seems to be a convincing approach as it ensures that due and fair treatment is afforded to the current Registrants.

The challenge though remains the best way of granting such preferential treatment. There are at least 2 options that can be pursued:

5.1.1. 3LR holders first
This approach uses a "Grandfathering" process that gives 3LR holders an opportunity to secure their 3LRs as SLRs before SLRs are available to new applicants. The duration of such a Grandfathering period differs from one ccTLD to another. For example:

(a) .ke gave its 3LR holders a 3 month Grandfathering period that ran parallel to a sunrise phase. This means that new domain name applicants were able to register new SLRs that were not already registered as 3LRs, at the same time as 3LR holders were registering their matching 3LRs.

Failure by 3LR holders to register matching SLRs during the 3 months period led to the matching SLRs becoming available to the public on a first-come, first-served basis.

(b) In .uk, 3LR holders were given a period of 5 years to register their 3LRs as SLRs. During this period, the .uk registry operator freely reserved the 3LRs as SLRs.

(c) In .nz, 3LR holders were given a 2 year period to register their matching SLRs. During the period, the SLRs that match 3LRs were reserved for free.

The advantage of the Grandfathering approach is to ensure that current 3LRs are given some "respect" and recognition for having supported the namespaces over time. They are given time and space to protect their intellectual property rights at the SLR level.

Another advantage is that such approach may allow for a prolonged public awareness in preparation for the General Availability phase (i.e. a phase when Domain Name applications are accepted from all-comers on a first-come, first-served basis). A potential downside of the Grandfathering approach is that new SLR applicants may have to wait longer to obtain their SLRs.

5.1.2. Concurrent Approach

This option provides some form of preferential preference to current 3LR holders by reserving their matching SLRs, while allowing Sunrise and/or General Availability to commence at the same time as the Grandfathering period. This requires the registry operator to reserve all SLRs that match 3LRs at the time of launching SLRs. The parallel Sunrise and/or General Availability is, therefore, only open to SLRs that do not match already existing 3LRs.

It is then up to the 3LR holders to register their matching SLRs at a time of their choice. However, the reservation would normally be for a definite period after which during the Grandfathering period ends. During the Grandfathering period, the 3LR holders may not be charged any fees for the reserved 3LRs.

One advantage that Concurrent Approach has is that new Domain Name applicants are able to acquire SLRs from the start without compromising the "rights" of the current 3LR holders. Holders of 3LRs are also afforded protection without having to pay for it.

One argument against this approach, however, is that it may be unfair for some to have 3LR holders reserving their matching SLRs for free during the reservation period, while new SLR holders have to pay for their SLRs. A counter argument, of course, is that it is likely more

unfair to require current 3LR holders to pay for 3LRs and also pay for SLRs at the same time.

Another challenge against the concurrent Grandfathering – Sunrise/General Availability approach is that the approach may put added marketing and awareness pressure to the registry operator and registrars, as they have shorter marketing window than in the "3LR holders first" approach.

Both approaches have their pros and cons, and it is important that a best approach in terms of sustainability, intellectual property protection and fair access to domain name services is implemented.

5.1.3. Conflicts between generic 3LRs

Regardless of the approach, there is an issue regarding generic names registered as 3LRs in different SLDs. These are the names that are not "trademark-able" as they are generic e.g. *business.co.za, business.net.za* and *business.web.za*.

The issue is about which generic 3LR holder should be allocated a matching SLR. There is a viewpoint that supports giving preference to generic Domain Names in co.za in the same way as .uk gave preference to co.uk 3LRs. The challenge with this approach is that the basis on which such value judgments are made between SLDs is unclear and probably indefensible.

The .nz SLR process sought to resolve this conflict by giving conflicting generic 3LR holders time to negotiate and agree on who should be allocated the matching SLR. Failure to agree resulted in the conflicting SLR being added to a blocked names' list, which means the matching SLRs cannot be registered.

However, the .nz approach also appears to be arbitrary because it denies interested parties an opportunity to register the generic 3LR as an SLR through open competition. It seems more feasible to simply allow the concerned matching SLRs to be registered through auction between or among the matching 3LR holders, as this can resolve the conflict through a fair, open process.

FEEDBACK QUESTION 2:

(a) Should 3LRs be treated differently? For example:

   (i) Should we cease acceptance of new 3LRs and only accept SLRs?

   (ii) Should SLRs be priced differently to 3LRs?

(b) Should 3LR holders be given a first-move in SLR launch (e.g. through sunrise period) over new SLRs?

(c) If matching 3LRs are reserved for current 3LR holders, how long should the reservation period be? Why?

(d) Where there are competing generic 3LRs (e.g. business.org.za vs business.co.za vs business.net.za), how should such conflicts be resolved when reserving matching SLRs? Through an auction process? Through granting the first "right" to the oldest registration? Through another mechanism? Why?

5.2. Possibility of eligibility requirements

Another important dynamic is whether or not eligibility requirements should be imposed to ensure a more sustainable SLR implementation. One view is that .ZA is for South Africans, and should always prioritise the South African Internet community interests. Accordingly, SLRs are viewed as a unique opportunity to give South Africans preference to non-South African applicants.

This view may be substantially warranted if one appreciates the fact that of all the .ZA SLDs, only co.za and web.za are truly open to domain name registrations from South Africa and outside South Africa. The rest of the SLDs (e.g. ac.za, edu.za and gov.za) only accept domain name registrations from specific South African communities.

This makes a case for restricting SLR eligibility to South Africans. Australia (.au) is considering a similar approach as it nears the .au SLR launch. However, imposing eligibility requirements is not without its challenges:

5.2.1. SLRs held by non-South Africans

Imposing eligibility requirements in .ZA SLRs will be practically difficult in the case of co.za, which accounts for almost 97% of all .ZA 3LRs. In addition, although org.za and net.za are primarily meant for South Africans, they remain un-moderated. This means that they are both likely to have a substantial percentage of 3LRs that are held by non-South Africans.

This then makes it difficult, all of a sudden, to exclude non-South African 3LR holders from registering or reserving matching SLRs. Furthermore, it is sometimes difficult to tell with utmost certainty whether or not a domain name holder is South African.

Another difficulty arises from the provision of privacy and proxy services by registrars, which results in Registrars being listed as Domain Name holders on behalf of the Registrant for privacy protection purposes. In such cases, it is difficult to determine readily whether or the real Registrant is a South African person.

5.2.2. Unwarranted cost burden

In all likelihood, imposing eligibility requirements will require the registry operator to moderate all SLR applications to ensure they comply with eligibility requirements. Such responsibility is likely to significantly slow down the SLR process as each application will be individually moderated.

In the case of juristic persons, the Company and Intellectual Property Commission's (CIPC) database may have to be consulted to verify the accuracy of a company registration number. Additional documentation may well be required from each juristic person's representative to verify his or her authority to register a matching SLR.

This will result in added administrative and operational costs because both human and IT resources will have to participate in the moderation process. This in turn may result in the SLR price being higher than intended, which can slow down the growth of SLRs.

5.2.3. Role difficulties

Imposing eligibility requirements may be problematic because it is not clear how far such a "South Africans only" SLR eligibility requirements should be imposed. For example, should they be imposed indefinitely or should they be imposed for a limited period? What should be the basis of such eligibility requirements? Who should enforce the eligibility requirements? The Registry Operator, Registrar or ZADNA?

Registrars are unlikely to find it appealing to bear the responsibility of ensuring that their SLR applicants (who typically apply online) meet SLR eligibility requirements, as such responsibility means additional costs and legal risks.

One approach may be to simply stipulate SLR eligibility requirements as a term and condition of registration (as was done in the 2014 re-launch of net.za, org.za and web.za). In this scenario, the SLR applicant undertakes and guarantees that they are South African persons and are eligible to register SLRs. This scenario means that neither the Registry nor the Registrar has a moderation burden.

The problem, however, with this "passive moderation" approach is that it will be difficult to enforce eligibility compliance because ZADNA, the Registry Operator and Registrar will have to trust that the SLR applicant is truthful in their undertaking.

Another difficulty may arise when an SLR holder (Registrant) who is a South African person later transfers their SLR/s to a non-South African person. Practically, it will be difficult for ZADNA, the Registry Operator and Registrar to police such actions.

5.2.4. Eligibility frustrate ease and speed of registration

The expectation is that domain name registration should always be easy, fast, secure and affordable. If eligibility requirements are imposed, the registration process will become much slower and potentially discourage applicants from acquiring SLRs.

FEEDBACK QUESTION 3:
(a) Is it sensible to impose eligibility requirements that restricts acceptance of SLR applications from South African persons only)?   (b) Are there other eligibility requirements that should be imposed?   (c) Should such a South Africans only SLR eligibility requirements be imposed definitely (i.e. for a determined period) or indefinitely (i.e. permanently)? Why?   (d) How should such eligibility requirements be implemented in an automated registration process?   (e) If the South Africans only SLR eligibility requirements were imposed, will it be feasible and/or sensible to prohibit SLR holders from later transferring or selling their SLRs to non-South Africans?   (f) If such eligibility requirements are imposed, who should bear the responsibility of verifying each SLR application to ensure that the applications meets the eligibility requirements? ZADNA, Registry Operator or Registrars?

6. LEGAL AND POLICY CONSIDERATIONS

6.1. ECT Act

The Act has certain stipulations that may be construed to indirectly assume a 3LR-centred business model for .ZA. Chapter X of the Act requires ZADNA to license registries and registrars for registration of names at the 3rd level (i.e. below SLDs. The Act does not suppose a scenario of SLRs in .ZA, but also does not prohibit it.

Implicitly, ZADNA, in its capacity as the .ZA ccTLD manager, is practically the "root" registry operator of .ZA in that it delegates SLDs for which registries and registrars must be appointed. Only ZADNA can add names at the second level (currently as SLDs) of .ZA. The SLDs themselves are not licensed, but are simply delegated. The Act only requires ZADNA to license registries and registrars to provide 3LR services in the delegated SLDs.

The practical difficulty, however, arises from the fact that, to date, ZADNA has never licensed registries and registrars due to inherent weaknesses in the Act. The decision not to license was taken in 2010 after ZADNA and the then Department of Communications received 2 separate legal opinions from the State Law Advisor that concluded that the weaknesses and gaps in the Act warranted registry and registrar licensing not to be implemented until the Act was amended.

It was out of this reality that ZADNA had to appoint the former UniForum SA to serve as the ZA Central Registry (ZACR) through the .ZA SLD Operating Agreement. The Operating Agreement serves as a stop-gap measure until the Act is amended. Unfortunately, the Act is only scheduled for amendment in the 2018/2019 financial year.

6.2. .ZA SLD General Policy

The .ZA SLD General Policy became effective in April 2015 and it determines principles and practices underpinning .ZA. In relation to SLRs, the General Policy stipulates that:

(a) *"No registration of Domain Names is allowed at the second level of .ZA"* *(clause 1.1.1);*

(b) *"No additional Private Use SLDs will be delegated" (clause 1.2.2).*

(c) *"…A Private Use SLD is exempted from complying with the General Policy, but ZADNA may develop a separate policy for Private Use SLDs, and may amend the General Policy to make its provisions apply to Private Use SLDs" (clause 12.1)*

These provisions of the General Policy make it clear that SLRs are not allowed and that no new Private SLDs will be delegated. At the same time, clause 12.1 of the General Policy empowers ZADNA to make additional or separate policy to cater for Private SLDs. Although not expressly stated in the General Policy, it seems that the objective of clause 12.1 is to cater only for already existing PU-SLDs (i.e. grondar.za, mil.za and nis.za) instead of new PU-SLDs.

Regardless, it is clear that ZADNA will need to amend the General Policy (if SLRs or PU-SLDs are introduced) to eliminate the clause 1.1.1 and 1.2.2 prohibitions against SLRs. ZADNA recently obtained a legal opinion that also concluded that there is an expectation, in terms of administrative justice, on ZADNA to adhere to its own policies. Accordingly, ZADNA may not implement SLRs until it amends the General Policy to allow for new registrations at the 2nd level of .ZA.

6.3. .ZA SLD Establishment and Disestablishment Policy

ZADNA delegates SLDs in line with the .ZA SLD Establishment (Delegation) and Disestablishment Policy ("SLD Establishment Policy"). This Policy aligns the SLD delegation process to the ECT Act licensing requirements in that it requires that each new SLD must have a nominated registry operator and registrar. Clause 2 of the SLD Establishment Policy states:

> *"No domain shall be accepted unless an initial Registry, and at least one initial Registrar, are nominated."*

Clause 3 states:

> *"Every application for a domain (i.e. SLD) shall be accompanied by a proposed charter for the domain. No domain shall be created unless a charter has been approved by the Authority (i.e. ZADNA)."*

Clause 14 of the SLD Establishment Policy states:

> *"Upon receipt of an application which meets the criteria above by the Authority, it shall be posted on the Authority's (ZADNA) public Internet site for a period of no less than thirty (30) days to allow public comment."*

It is worth pointing out, however, that the SLD Establishment Policy was developed when ZADNA was incorporated in early 2004. It did not apply to the current SLDs as they all pre-date ZADNA's existence, except nic.za and my.za that ZADNA delegated in 2017 for its private use.

In practice, however, there are currently 3 Private Use SLDs (PU-SLDs) that ZADNA inherited when it assumed the management and administration of .ZA in 2004. These are *agric.za, grondar.za, mil.za* and *nis.za*. Prior to the deletion of "inactive" PU-SLDs in 2009, there were at least 9 other PU-SLDs that pre-dated ZADNA, and these were: *bourse.za, cybernet.za, db.za, iaccess.za, imt.za, inca.za, landesign.za, olivetti.za* and *pix.za*.

This shows that although the SLD Establishment Policy has long been in existence, it did not do away with existing PU-SLDs. This lends credence to the view that the SLD Establishment Policy should not serve as a prohibition against new PU-SLDs or SLRs.

In addition, the SLD Establishment Policy is subject the General Policy. Prior to the General Policy, ZADNA developed a separate SLD Deletions Policy to guide the deactivation of several historical SLDs that were inactive and were deleted in 2009. The SLD Deletions Policy was developed in spite of the SLD Establishment Policy dealing (albeit insufficiently) with matters re-delegation and deletion of SLDs.

The General Policy and SLD Deletions Policy were intended to cover aspects that the SLD Establishment Policy does not cover at all or does not cover sufficiently. The fact that the SLD Establishment Policy does not provide for the possibility of PU-SLDs or SLRs, while in practice there are at least 5 PU-SLDs, may be a ground for the amendment of the SLD Establishment Policy

itself or the General Policy, and/or for the development of a separate policy that deals specifically with SLRs.

Such a separate policy should provide clear difference between the status of SLRs and the status of the current (historical) SLDs. The separate policy should also provide clear exceptions and conditions on which of SLR applications may be accepted or declined.

6.3.1. Amending ZADNA's Articles of Association

The SLD Establishment Policy is part of ZADNA's Articles of Association, and its amendment will amount to the amendment of the Articles of Association. Amending the Articles requires, in terms of the Act, the approval of ZADNA members and the Minister of Telecommunications and Postal Services.

ZADNA already drafted a Memorandum of Incorporation (MOI) that is intended to replace the Articles of Association and the draft MOI excludes the SLD Establishment Policy. The MOI will soon be released for comment and approval of ZADNA members.

FEEDBACK QUESTION 4
(a) Should a specific policy be developed to cater for SLRs or PU-SLDs or should only the General Policy and the SLD Establishment Policy be amended?
(b) Are there any other specific considerations that such a separate SLR or PU-SLD policy should cover that have not been addressed above?

7. HOW SHOULD SLRS BE IMPLEMENTED

Generally, the roll out of SLRs should be carefully managed to protect existing domain name and intellectual property rights and avoid potential confusion. To achieve this, the following comes into play:

7.1. SLRs should not become SLD registries

In the past (especially before the delegation of ICANN new gTLDs from 2012), ZADNA received a number of queries and requests for both SLRs and new SLDs. Requests for new SLDs were meant to provide new 3LR channels and competition to the existing SLDs. In the last 3 to 4 years, requests have largely been for SLRs that are intended for private use instead of selling 3LRs.

This shift in the use of SLRs is understandable in view of the interest in shorter URLs and in brand-specific gTLDs. What remains an issue is whether or not SLRs should be allowed to serve as new SLDs, and what is the best manner in which ZADNA can ensure that SLRs (PU-SLDs) are only used for private purposes.

There are several measures that can be implemented to achieve this. At the least, SLR holders can be compelled, as term of contract in registering SLRs, to undertake that the SLRs will not be used to sell or provide 3LRs outside the SLR holder. Measures can then be put in place to monitor compliance with the SLR contract.

Should an SLR be found to have contravened this prohibition, the SLR can be suspended and its holder could be fined. A harsher measure can be a termination and deletion of the non-compliant SLR. An offending SLR holder can also be listed to ensure that they are not able to register the concerned SLR for a set period.

7.2. Reservation of Certain Names

It is an established practice that registry operators, when launching TLDs, reserve certain names for their exclusive use. The .ZA SLD General Policy

allows the development of specific name reservation policies and lists where ZADNA sees it necessary. Some of the names that may be reserved include:

7.2.1. Names for technical stability of the stability
These are names that are accepted in the global domain name industry as critical to the stability of the Internet. Such names include www, Internet, Whois, and DNS.

7.2.2. Names similar to other TLDs
Reserved names may include names that are similar to other TLDs, such as ISO 2 letter country codes (e.g. bi.za, us.za and eg.za) and ICANN TLDs (e.g. com.za and biz.za).

7.2.3. Names competing with established SLDs
SLRs that present unwarranted competition to current SLDs may also be reserved (and not made available for registration at the second level). These are names such as com.za and biz.za (which would compete with co.za), or.za and npc.za (competing against org.za), go.za (competing with gov.za), and sch.za (competing against school.za).

7.2.4. Names for specific public authorities
Some names may be reserved for exclusive use by public authorities, such as government.za, parliament.za, police.za, elections.za and tax.za. These names may be allocated to relevant authorities for their use at a later stage.

7.2.5. Offensive names
Names accepted to be offensive may also be reserved and not be available for SLR. The offense of such names may be based on race, gender, religion and culture.

7.3. Minimum character requirements

Restrictions may also be set for minimum number of characters that an SLR should have. For example, a number of TLDs do not accept single character and 2 character names. Other registry operators reserve such names as premium names that are sold at higher fees or through auction.

Exceptions, of course, can be made to accommodate intellectual property rights that may be unduly restricted by such prohibitions. In particular, there are 2 letter domain names already registered in co.za, and their holders should not be refused an opportunity to register them as SLRs, unless they may contravene a ZADNA policy.

7.4. Status of SLRs

In view of the abovementioned legal and policy considerations, a decision has to be made about a suitable treatment of SLRs taking into consideration the "silence" of both the ECT Act and the SLD Establishment Policy.

7.4.1. Exemption of SLRs from SLD Establishment Policy

A simple approach is to use the precedent of the existing PU-SLDs to treat SLRs as PU-SLDs, and exempt PU-SLD holders from the SLD Charter, Registry and Registrar licensing / accreditation obligations.

7.4.2. Using a standard Charter for SLRs

An alternative approach may be for zaDNA to develop a standard Charter that all SLR applicants must accept as a term or condition of registration. Such a standard Charter may then have all SLR applicants accepting the Registry Operator designated for SLRs to be their Registry Operator for Charter compliance purposes.

Similarly, whichever accredited Registrar an SLR applicant uses to register SLR will serve as their designated Registrar as prescribed in the SLD Establishment Policy.

This approach will be faster than trying to amend the SLD Establishment Policy because such amendment may take a longer than desirable time to finalise. This is because such an amendment will in itself require the amendment of the Articles of Association, which in turn requires the Minister's approval.

FEEDBACK QUESTION 5

(a) What policy and/or procedural measures should be put in place to ensure that SLRs are not used to sell 3LRs?

(b) Are there additional names that should be reserved against SLR?

(c) Should minimum character requirements be imposed against single character, 2 character and 3 character names?

(d) Should such minimum character names be indefinitely reserved or should they be made available at a later stage?

(e) If or when made available, should single, 2 character and 3 character names be sold at higher fees?

(f) Should exceptions be made on intellectual property grounds?

(g) What is the best treatment of SLRs in view of the current SLD Establishment Policy being part of the zaDNA Articles of Association?

   a. Should the Articles of Association first be amended to separate the SLD Establishment Policy from the Articles or the new Memorandum of Incorporation?

   b. Alternatively, as a means of fast-tracking SLR implementation, should zaDNA simply comply with the current SLD Establishment Policy by imposing a standard Charter that all SLR applicants will accept as a term of registration?

7.5. SLR Registry-Registrar Model

ZADNA, as the .ZA ccTLD Manager, is only entity that may delegate names at the second level of .ZA. It cannot delegate this responsibility to another entity, as it is not empowered by the ECT Act to do so. In any case, delegating such authority to another entity would amount to ZADNA empowering another entity to serve as the .ZA ccTLD manager – something that is against the letter and spirit of the ECT Act.

Notwithstanding, the actual SLR implementation may practically require ZADNA to contract another party to provide a registry system that will support automated SLR process and enable registrars to acquire accreditation to sell SLRs (PU-SLDs).

Accredited registrars can ensure quick and early buy-in to the SLRs as the registrars provide a readily available marketing and sales channel. This approach allows ZADNA to continue to be the .ZA registry operator without delegating its ccTLD responsibility to another entity.

It also allows zaDNA to separate itself from having to serve as an "active" Registry Operator that interfaces with Registrars. Such active interfacing with Registrars could go against the spirit of the ECT Act because the Act primarily designates zaDNA to be the regulator of Registries and Registrars. Simply put, the Act does not envisage zaDNA being involved in active Domain Name registration processes, as this may amount to zaDNA having to regulate itself.

7.6. ZACR system and registrar accreditation

It is fair to accept that SLR implementation must be sustainable in that it must be as easy as possible. Such ease, some argue, can best be attainable through using the ZACR system, as it can provide a "plug and play" capacity through the +500 accredited registrars.

Using the ZACR platform can help avoid duplications in accrediting registrars for SLRs because the registrars are already integrated to the ZACR EPP system, and will not need to incur any more developmental costs. In addition, the accredited registrars will be able to use the well-established ZACR billing interface instead of another, different billing interface.

However, the potential downside of using the ZACR is the perceived entrenchment of the ZACR monopoly over .ZA. From time to time, questions have been asked about why ZACR is allowed to be the only "real" EPP registry operator, and why other service providers are not afforded an opportunity to participate, through an open tender process, in the provision of .ZA registry services.

7.7. A case for another registry provider

The call for use of another EPP registry operator is premised on meeting the perceived need to create alternative registry capacity, and restrict the current scenario in which 99% of .ZA registrations are "locked" into ZACR alone.

An alternative registry provider can provide much-needed competition to ZACR especially if ZADNA were to terminate the current SLD Operating Agreement it has with ZACR or should the current agreement reach its expiry date.

However, using another registry provider is not without its challenges. Some argue that using another registry provider for SLRs (instead of ZACR) will likely slow down SLR growth. This is because registrars will need to be separately accredited for SLRs. Furthermore, such separate accreditation may cause registrars to incur additional costs that may discourage them from provisioning SLRs.

Others argue that there may be no local service provider that is able to provide an EPP registry system other than ZACR. Any pursuit of appointing another registry system provider inevitably means that a foreign registry provider is likely to be contracted, and such a move could give rise to political concerns.

The accuracy of this view, however, is disputable as several local Internet Service Providers (ISPs) argue that there is sufficient alternative capacity locally. Some ISPs have informally expressed desire to compete for the provision of registry services should SLRs be implemented.

In expressing such an interest, the affordability and fairness of the ZACR model are challenged on the basis that although ZACR is appointed to provide Central Registry services, the real registry services are outsourced to a 3rd party service provider (DNS Pty Ltd). This outsourcing leads to additional cost that drives up wholesale fees for co.za, net.za, org.za and web.za.

Appointing another party (other than ZACR) to provide SLR Registry Services can therefore help make SLRs wholesale fees to be more affordable than ZACR's.

7.8. Integrated ICT Policy White Paper Impact

An argument has been raised 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.

The White Paper also stipulates that this new Regulator will only accredit (and not license) registrars. This means that in any case ZACR-accredited registrars will have to be accredited again once the new Regulator is established.

The White Paper makes no provision for the accreditation or licensing of SLD registry operators because the new Regulator (which will absorb ZADNA) will be the registry operator of .ZA and .ZA SLDs. The new Regulator will also assume the registry functions of the current and future .ZA dotCities (.capetown, .durban and .joburg) from ZACR.

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.

The essence of the issues and challenges explained above is that there are important strategic choices to be made about a suitable registry business model to make SLRs a sustainable success. All the possible choices have their advantages and disadvantages.

FEEDBACK QUESTION 6
(a) Other than ease of registration, affordability, speed of registration and security, are there other key principles that should guide the implementation of SLRs?
(b) What are the benefits vs challenges of using the ZACR to provide the SLR?
(c) What are the benefits vs challenges of using another registry operator and registry system provider to provide SLRs?

7.9. Pricing Considerations

Pricing of SLRs is another important strategic decision in view of the fierce price competition between TLD operators. The pricing of .ZA 3LRs is accepted as competitive although some of the new gTLDs (e.g. .xyz) now charge lower fees than the ZACR wholesale fees.

The ultimate SLR pricing depends partially on whether SLRs are seen to be more "special" (premium) than 3LRs or are seen as equal to, or less than, 3LRs in value. There are several pricing options that could be explored:

7.9.1. Premium pricing
One approach is to treat SLRs as premium and of higher value than 3LRs, and then charge higher wholesale fees for SLRs. Such higher SLR pricing may be a good discriminating barrier that will allow genuinely interested parties to register SLRs. The downside, however, may be that such differentiation is seen as unnecessary, unfair and simply baseless.

7.9.2. Similar pricing to 3LRs
SLRs may also be priced the same as 3LRs. Such wholesale pricing might be well-received in the registrar community as it supports consistent and easy-to-manage pricing regime. Similarity in pricing between SLRs and 3LRs may eliminate the perception that SLRs are intended for those with stronger economic means.

7.9.3. Higher initial premium price
It is possible to launch SLRs at a higher, premium price and then reduce them to 3LR wholesale fees or a different lower fee. This pricing regime can give preference to "serious" SLR interests and limit defensive registrations. The duration of a premium price may be a matter of months and even of years, but the pricing eventually drops to a lower wholesale price.

7.9.4. Pricing lower than 3LRs
One approach that is not so prevalent among the recent .co, .uk. and .ke SLR launches is to actually launch SLRs, and keep them, at a wholesale price that is lower than 3LR prices. This approach may be popular and make SLRs to be a more attractive option than 3LRs.

It may also eliminate the perception that SLRs are a moneymaking scheme. However, this option may significantly reduce interests in 3LRs and cause the number of 3LRs to decrease over time.

The above pricing scenarios show that there are different pricing options, and each has its own pros and cons.

FEEDBACK QUESTION 7
(a) Should SLRs be treated as more valuable than 3LRs? Why?   (b) If SLRs are more valuable than 3LRs, should they be charged at a higher (premium) wholesale fee than co.za, net.za, org.za and web.za 3LRs?   (c) Are there problems and/or benefits with charging SLR prices that are similar to 3LRs? If yes, what are those problems?   (d) Will it be problematic or beneficial to price SLRs lower than co.za, net.za, org.za and web.za SLRs? Why?   (e) Should a higher SLR price be used to incentivize and/or retain interest in 3LRs as a measure of ensuring 3LR viability?   (f) What pricing option is the best for SLRs amongst the listed options? Why?

7.10. Intellectual Property and Other Rights

The fact that 3LR holders can be given some preferential treatment in the SLR launch does not wholly resolve issues of intellectual property rights protection.

7.10.1. .ZA Alternative Dispute Resolution Process

The current .ZA Alternative Dispute Resolution (ADR) Regulations specifically cover 3LRs in co.za, net.za, org.za and web.za. The rest of the .ZA SLDs either do not enjoy the ADR protection or enjoy it as a term of registration enshrined in the SLD charters.

The ADR Regulations do not cater for SLRs, and the Regulations will have to be amended so that they can also cover SLRs. The practical challenge is that legislative amendment processes may take longer than 2 years, which may then cause delays in SLR launch.

A quick win approach may be to impose the application of ADR Regulations, in the interim, as a term of registration that all SLR holders undertake to comply with should disputes arise over SLRs. This approach was implemented successfully in the re-launch of net.za, org.za and web.za in 2014, and it proved acceptable to domain name holders.

FEEDBACK QUESTION 8
(a) Should ADR Regulations be extended to cover SLRs parallel to requesting the Minister of Telecommunications and Postal Services to amend the Regulations? Any reason. (b) Do you foresee any challenge with imposing the application of ADR Regulations over SLR disputes as a term of registration pending the amendment of ADR Regulations?

8. CONCLUSION

This Discussion Document has raised key strategic questions that should be answered to ensure a successful SLR implementation in .ZA. Detailed contextual information has been provided to guide parties responding to the questions. Responding parties are encouraged to raise other aspects they consider to be of importance in the implementation of SLRs in .ZA.