ISOC-ZA Response to .ZA Domain Name Authority Regulations

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1 Introduction

ISOC-ZA welcomes the opportunity to make ar submission the .ZA Domain Name Authority (hereinafter "ZADNA").

In general there is a clear need for regulations governing the Registry and Registrars and ISOC-ZA believes that the ZA DNA has an important role to play in the South African Internet industry.

However ISOC-ZA is concerned that there appears to be a lack of a cohesive framework underlying the regulations. As an anecdotal indication of this the incorrect reference to a "Registrar" in the Draft Registry Licensing Regulations and Procedures (hereinafter *Registry Regulations*") instead of "Registry" points to an attempt to paint both regulations with the same brush. Indeed the Draft .ZA Registrar Licensing Regulations and Procedures (hereinafter "**Registrar Regulations**") is so similar in both name and content to the *Registry Regulations* that it makes it extremely difficult to maintain the distinction between the two. In this regard ISOC-ZA suggest further effort should be made to make the two regulations more clearly distinct.

In this respect ISOC-ZA would like to draw ZADNA's attention to the following issues which appear lacking in the documentations:
- Different requirements for Registries should they be open or closed;
- Whether a central technical Registry could be licensed for all or many open second level domains (slds); and
- Whether a thick or thin registry model will be prescribed and in turn the requirements for whois services

ISOC-ZA would like to refer ZADNA to the public consultation process in 2007 where both open[1] and closed[2] slds were identified. As an example of this the .co.za domain would be open to the public at large (even for non-south African businesses and persons) while the .ac.za is closed to academic tertiary education organisations only.

The omission of these critical decisions may lead to inconsistencies or even irregularities which would undermine the stability of the namespace. It may be useful to include many of these elements in a separate charter and not in these regulations, but it is critical that ZADNA decides on a suitable open framework and regulates to a set of defined standards. We acknowledge that these may be introduced in the technical / operational standards although without purvue, we cannot make any assumptions.

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[1] I.e. anyone can register a domain in that specific registry.
[2] I.e. only people who meet the criteria in that specific registry are able to get the necessary domain.

2   Comments on the Registrar Regulations

In order to provide comments that can be easily understood we have chosen to use the table format below. Please note that many of the comments relating to the **Registrar Regulations** are repeated in the *Registry Regulations* due to the similarity of the two regulations.

Clause	Regulation Text	Comments
1	"**Registrar**" means an entity which is licensed by the Authority in terms of the .za Registrar Licensing Regulations to (i) register Domain Names on behalf of Registrants, and (ii) update the information in the Repository and the Registry Database relating to its Registrants; "**Registry**" means an entity licensed by the Authority to manage and administer (i) a specific Sub-Domain; and (ii) the Registry Database within that Sub-Domain;	While these two definitions are separate they do not provide clarity on whether the model is the thick (i.e. Registry hosting repository information) or thin (i.e. Registrar hosts the registry information). ISOC-ZA recommends that these definitions are amended to indicate that Registry hosts the Registry Database and Repository information (i.e. the repository becomes redundant).
1	"**Licence**" means a licence granted by the Authority to a Licensee in accordance with section 64 of the Act; "**Licence**" means a licence granted by the Authority to a Licensee in accordance with section 64 of the Act;	While the definition of "licence" in the first instance is taken from the **Registrar Regulations** and the second is from the *Registry Regulations* it is clear that text is identical for both licenses. ISOC-ZA recommends that a distinction be made between the two types of licenses as they have different powers and responsibilities.

4	(1) Any person may, upon an invitation by the Authority, apply for a Registry Licence in the form and format prescribed in Schedule A to these Regulations. For the avoidance of doubt, applications for Licenses in terms of these Regulations will only be accepted upon invitation by the Authority. a) the management and administration of the Registry Database; b) the management and administration of any Sub Domain, which it is licensed to operate; and c) the development and implementation of the policies and procedures contemplated in 3(2).	Firstly it should be noted that this clause does not make grammatical sense. Secondly it is unclear why applications for a Registry Licence can only be made on invitation. This restriction seems inconsistent with a open and democratic society based on freedom and equality. Moreover this section assumes that there will be every sld requires it's own unique registry systems and policy (i.e. duplication that may be avoided with a central registry). ISOC-ZA recommends that criteria be published which would indicate what a potential Registry Licence applicant would need to satisfy in order to qualify and that these requirements be open to public scrutiny. Moreover ISOC-ZA recommends that there is a central registry operator for open slds as is standard practice in other jurisdictions.
S5(1)	For the avoidance of doubt, applications for Licenses in terms of these Regulations will only be accepted upon invitation by the Authority.	Aside from repeating what is said in clause 4(1) and as such being tautologous, our objections to an invitation-only system has been set out above.
S5(2)	An Applicant must have legal personality.	It is unclear what the words a "legal personality" are meant to convey. For example the National Credit Act no. 35 of 2005 indicates that a Trust with two natural persons as trustees is not a juristic person while a partnership is considered to be a juristic person. ISOC-ZA recommends that this term be defined in clause 1 to include Trusts, Public and Private Companies as well as Close Corporations.

S5(4)	Upon receipt of any request in terms of regulation 5(3), the Authority may (but shall not be obliged to) render the assistance requested by the Applicant.	It is unclear why ZADNA would not be obliged to provide assistance to an applicant. Indeed if assistance is not forthcoming from ZADNA then to whom should the applicant turn? ISOC-ZA recommends that the word "may" should be replaced by "must" in the Regulations.
S6(2)(c)	Where a request referred to in regulation 6(1) is made by an Applicant, the Authority may grant the request to amend the Application where the amendment will not- (a) unfairly prejudice other interested parties; (b) impede the expeditious and proper consideration of the Application; or (c) materially change the Application.	It is unclear why an applicant should be prevented from materially changing its application. Indeed if subsection (a) and (b) are not contravened there appears to be no good reason why an application should not be able to be materially amended. ISOC-ZA recommends that s6(2)(c) be deleted.
7(4)	If the Authority refuses a request contemplated in regulation 7(3), the Applicant or person concerned may withdraw the document or information in question, in which event, the Authority shall not consider the document or information so withdrawn. If the Applicant chooses not to remove the document or information, the Authority must publish the entire Application on its website for public comment.	The time period must be set out so that the applicant is aware of when the Authority will publish the entire application, failing which the applicant could be surprised to find its confidential information made publicly available. ISOC-ZA recommends that a set notice period of 10 working days be provided to the applicant in order for there to be certainty and that a mandatory notice of this action by the Authority must be given to the applicant.

S10(1)(h)	Subject to the provisions of regulation 10(i)(g)(vi), keep the Personal Information of the Registrant and Registrar confidential and must not, unless required to do so by these and other Regulations published by the Authority, any other law of the Republic of South Africa, or by order of court, sell or otherwise provide access to the information of a Registrant or Registrar to any third party.	The relevant sub-regulation (10(i)(g)(vi)) is incorrectly named and should be (10)(1)(g)(vi)). Clause 10 in general appears to have avoided the opportunity to make it absolutely clear what the "whois" system must do especially with respect to confidential or non-confidential information. The mere reference to the "whois" system in the definition of "Registry Database" is insufficient to cure this problem. ISOC-ZA recommends that the clause is changed to explicitly exlcude confidentiality for any personal information included in the whois..
S17	See section 17 generally.	The effect of a "suspension" of licence is not set out. For example it is unclear whether a Licensee can continue operating or is operating subject to oversight etc. ISOC-ZA recommends that the effect of a "suspension" on a licensee during the suspension be unambiguous. It is further suggested that a Licensee that is suspended be allowed to continue with present operations but be unable to process new applications.

S17(1)(f)	the Authority determines, in its sole and absolute discretion, that it is in the public interest to suspend the Licence.	This subsection along with subsection 17(1)(e) provide the ZADNA with an absolute discretion to suspend a Licensee even on spurious grounds. Indeed the inclusion of earlier grounds for suspension is largely irrelevant due to these overbroad clauses which could be used in almost any situation. Moreover the inclusion of these two sub-sections opens the door to the Authority being able to pressure the licensee without having a legitimate ground upon which it would suspent the licensee. ISOC-ZA recommends that these sections be deleted or a further oversight function be utilised (such as the South African Courts) be used in order to prevent the abuse of these sub-sections.

Schedule A, 5	Continuous and ceaseless provision of domain name registration services for the registry in which it is licensed to register names, unless a satisfactory alternative **registrar** has been licensed to take over the registration services, or unless required to do so by the Board. If the **registrar** ceases to provide registration services or is required by the Board to cease, it shall provide a full copy of its registration database to the Authority within twenty (20) working days or any period decided by the Authority after taking into consideration public interest and security and stability of domain name system and the Internet."	With respect to the Registry Regulations, it would appear that the word "Registrar" should be replaced by "Registry" in two occasions. Moreover the form is identical in both the **Registrar Regulations** and *Registry Regulations.*
		With respect to the Registrar Regulations, it would appear that together with the co-published "ZA DNA Policy and Licensing Roadmap" there is an indication that Registrar licenses may be intended to be Registry specific. Whilst some technical accreditation may be required per Registry, we do not understand why multiple license are required. It appears that this requirement to apply for additional licenses is anti-competitive and will result in the opposite outcome to what the ECT Act intended. ISOC-ZA recommends that Registrar licenses are not Registry specific.

3   Conclusion

Valuable work was undertaken by ZADNA in 2007, it does not appear present in the these draft regulations. We expect ZADNA to provide clear and unambiguous regulations especially in respect of the differences between the Registry and Registrar regulations.

ISOC-ZA would favour the registering of Registries as a priority and the Registrars secondarily. Clarity on the overall framework will be useful in further discussions. ISOC-ZA acknowledges the ZADNA Policy and Licensing Roadmap and look forward to the expected timeline.

ISOC-ZA thanks the ZADNA for its consideration of this submission.