



Note

on

Kazakhstan's Regulations for the Allocation of Domain Space

London
October 2005

**Commissioned by the Representative on Freedom of the Media of the
Organisation for Security and Cooperation in Europe**



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1. INTRODUCTION

This Note comments on a set of Regulations issued by Kazakhstan's Agency for Informatization and Communication, regarding the allocation of domain names in the Kazakhstan segment of the Internet.¹ Our comments were requested by the Office of the Representative on Freedom of the Media. This Note examines the Regulations against international standards on the right to freedom of expression.

The Regulations, issued under the "Law On Informatization", lay down the basic requirements and registration criteria for any person who wants to register a site under the .kz domain of the Internet and all its subdomains (org.kz for not for profit organisations; edu.kz for educational websites; net.kz for organisations providing data transfer services; gov.kz for government agencies; mil.kz for military agencies; and com.kz for business entities). The Regulations will be administered by a government agency, although it is not clear which one will be responsible: the Order through which the Regulations were decreed mentions that the Department of Informatization and Legal Service together with the Ministry of Justice will be responsible for "state registration of this order", while the Deputy Chairman of the Agency for Informatization and Communication is put in charge of execution of the Order. Whichever of these three agencies will be ultimately responsible, it is important to note that all three are government agencies or departments.

Under the Regulations, any person wishing to register a .kz domain name needs to lodge an application with the relevant government agency, giving their name and contact details as well as other information including the name and network address of the proposed primary and secondary servers. Under Clause 5 of the Regulations, the Registrar has ten days to process the application. At the end of the 10 days, the registration must be either granted or denied. A denial of registration can be issued on four grounds, listed in Clause 7:

- 1) that the application was not submitted in accordance with the form provided for;
- 2) that the domain name has already been registered;
- 3) that the applicant has omitted to submit information regarding at least two DNS servers based in Kazakhstan; or
- 4) that the domain name is listed among the reserved domain names.

Under Clause 8, the registration of a domain name may be suspended "if the data submitted by the registrant for registration is found to be incomplete or incorrect"; if one of the domain's servers is found to be located outside Kazakhstan; "if the basis onto which the name was registered is changed"; "by court decision in accordance with Republic of Kazakhstan law"; or on the request of the applicant. Suspension is effective immediately and lasts for ten days, after which the owner of the domain name is expected to rectify the situation. Suspension on court order is effective immediately. If the cause of the suspension is not addressed, the site will be de-registered.

¹ Regulations for the Allocation of Domain Space in the Kazakhstan Segment of the Internet, Order No. 88-b of 5 April 2005 by the Acting Chairman of the Republic of Kazakhstan Agency for Informatization and Communication (the Regulations themselves are dated 8 June 2005). Our comments are based on an unofficial translation of the regulations, which is attached as Annex 1.

2. ANALYSIS OF KAZAKHSTAN'S REGULATIONS FOR THE ALLOCATION OF DOMAIN SPACE

We are concerned at several aspects of the regulation that we believe constitute an illegitimate interference with the right to freedom of expression on the Internet. In particular, we are concerned that the regime will be administered by a government agency, which introduces the potential for political interference, and that domain name registration may be refused or suspended on a number of vague or seemingly illegitimate grounds.

We recall at the outset that Kazakhstan is a signatory to the *International Covenant on Civil and Political Rights* (ICCPR),² which guarantees the right to freedom of expression at Article 19, and as such is legally bound not to introduce any regulation or act in a manner that is contrary to the ICCPR's purpose and spirit.³ Kazakhstan is also a party to a number of OSCE agreements that protect human rights and freedom of expression, such as the Helsinki Final Act,⁴ the Final Document of the Copenhagen meeting of the human dimension of the OSCE,⁵ the Charter of Paris agreed in 1990,⁶ the final document of the 1994 Budapest CSCE Summit,⁷ and the Istanbul Summit Declaration.⁸ Finally, the right to freedom of expression is protected under Kazakhstan's own Constitution.⁹

The right to freedom of expression protects Internet content and its infrastructure just like any other form of expression. An interference with the technical means through which a person wishes to receive information or express him or herself constitutes an interference with the right to freedom of expression.¹⁰ Under Article 19(3) of the ICCPR, any such interference is legitimate only if it:

1. is provided by law;
2. pursues a legitimate aim; and
3. is "necessary in a democratic society".

The European Court of Human Rights, ruling on the very similar clause stated in Article 10(2) of the European Convention on Human Rights, has stated that the first requirement will be fulfilled only where the law is accessible and "formulated with sufficient precision to enable the citizen to regulate his conduct."¹¹ This means that vague or broadly worded restrictions, or restrictions that leave excessive discretion to executive authorities, are incompatible with the right to freedom of expression. Second, the interference must pursue one of the aims listed in Article 19(3); the list of aims is an exhaustive one and thus an interference which does not pursue one of those aims violates Article 19. Third, the interference must be "necessary" to

² UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976. Kazakhstan signed the ICCPR on 2 December 2003, but has not yet ratified it.

³ Vienna Convention on the Law of Treaties, adopted on 22 May 1969 and opened for signature on 23 May 1969 by the United Nations Conference on the Law of Treaties, entry into force 27 January 1980, Article 18. Kazakhstan acceded to this treaty on 31 March 1993.

⁴ OSCE, Helsinki, 1 August 1975.

⁵ Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, June 1990. See in particular paragraphs 9.1 and 10.1.

⁶ Charter of Paris for a new Europe, CSCE Summit, November 1990.

⁷ Towards a Genuine Partnership in a New Era, CSCE Summit, Budapest, 1994, paragraphs 36-38.

⁸ OSCE Istanbul Summit, 1999, paragraph 27. See also paragraph 26 of the Charter for European Security adopted at the same meeting.

⁹ Article 20.

¹⁰ See *Autronic AG v. Switzerland*, 22 May 1990, Application No. 12726/87 (European Court of Human Rights).

¹¹ *Ibid.*, at para. 49.

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secure one of those aims. The word “necessary” has specific meaning in this context. It means that there must be a “pressing social need” for the interference;¹² that the reasons given by the State to justify the interference must be “relevant and sufficient” and that the State must demonstrate that the interference is proportionate to the aim pursued. As the Human Rights Committee has stated, “the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect.”¹³

In most democratic countries, domain name registration is a relatively straightforward process, unburdened by excessive regulation or bureaucracy. It also tends to be run by non-government entities. In light of this comparative evidence, we do not believe that the restrictions imposed under the Regulations can be justified under international law. The following paragraphs elaborate on this concern and provide recommendations for improvement.

The requirement that web servers hosting a .kz domain must be located in Kazakhstan
Clauses 7 and 8 provide that an application for domain name registration may be refused, or registration may be cancelled, if the domain’s servers are not located inside Kazakhstan.¹⁴

This rule contradicts established practice in many other countries around the world. In practice, many websites registered in one domain – say, .uk, or .nl – are hosted outside the physical territory of the country to whom that domain belongs. This is inherent in the global nature of the Internet: a person located anywhere in the world can access any other information on the net, regardless of where it has been uploaded, or where it is hosted. There are many reasons why Internet companies may wish to locate their servers outside of the physical territory of the registered domain. Businesses might want to take advantage of certain tax rules or other regulatory advantages or incentives, they may want to use a faster network than that which is available in the country of registration, or they may simply be attracted by an overseas jurisdiction that respects the right to freedom of expression. Given the global nature of the Internet, there is no reason why such a move should be blocked.

We do not see any justification for the geographic requirement imposed under the Regulations – technical or otherwise. The only feasible justification might be to support local hosting companies, but this is highly unrealistic to be effective in practice: the cost of local hosting is far higher than that outside the country; there are not many local hosting companies, and question marks have been placed at their ability to cope if everyone was to be forced to make use of their services; outside connections to servers in Kazakhstan are very slow; and there is widespread suspicion that local hosting companies are controlled by the Government and are likely to close down or refuse to host any site that the Government finds unpalatable. In any event, support for the local hosting industry could be achieved through other means that are less intrusive on the right to freedom of expression, such as tax incentives. As such, this aspect of the Regulations in our opinion fails the “necessary in a democratic society” requirement.

Reasons for refusing or suspending registration

¹² See, for example, *Hrico v. Slovakia*, 27 July 2004, Application No. 41498/99, para. 40.

¹³ *Rafael Marques de Morais v. Angola*, note **Error! Bookmark not defined.**, para. 6.8.

¹⁴ Under Paragraph 6(2), information is required not only regarding web servers, but also regarding at least two DNS servers – which must also be located inside Kazakhstan.

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Clauses 7 and 8 provide a number of reasons for refusing or suspending domain name registration. In addition to refusal or suspension for failure to locate servers in Kazakhstan, registration may be refused or suspended if “if the basis onto which the name was registered is changed”; if “the application was not submitted in accordance with the [required] form”; if “the data submitted by the registrant for registration is found to be incomplete or incorrect”; and “by court decision in accordance with Republic of Kazakhstan law”.

We seriously question whether any of these grounds can serve as a legitimate basis for restricting freedom of expression. If a person fails to submit information in the correct form, or if some data is found to be inaccurate or incorrect, a more helpful response on the part of the agency in charge would be to point out the error and suggest that it is rectified. A straight-out refusal is an unnecessarily bureaucratic response to a potentially minor problem – particularly when one bears in mind that the effect of de-registration is that the website will be inaccessible. We are also concerned that similar formulations have been used in Uzbekistan to refuse registration of newspapers and non-governmental organisations, highlighting the potential for abuse of such a clause.

One of the other grounds for refusal or suspension – “if the basis onto which the name was registered is changed” is so vague as to be entirely devoid of meaning, while the last ground – “by court decision in accordance with Republic of Kazakhstan law” – gives no indication whatsoever regarding the substantive grounds on which a court might rule to that effect. They are insufficiently precise and fail the “in accordance with the law” requirement under Article 19 ICCPR.

Domains may be closed down with no or very little notice

Under Clauses 9 and 10 of the Regulations, a registration is suspended immediately when one of the various grounds has been identified. There is no prior notice to the owner of the domain; he or she is merely notified and invited to rectify whichever fault has been found. As noted, the effect of suspension is that the site is no longer accessible to would-be visitors.

This appears to us to be a disproportionately intrusive procedure. Suspension of registration is an ultimate sanction – second only to full and permanent de-registration – that deprives the domain’s owner of his or her right to express him or herself through his or her chosen domain. If the domain is used for e-commerce purposes, it can have disastrous consequences for the owner’s business; if the domain is owned by a political party, suspension can deprive that party of an important means of communication with the public. Such a severe restriction of the right to freedom of expression and other rights needs serious justification and should never be imposed without due process. We have already commented that many of the reasons for which a domain name may be suspended or deregistered are illegitimate; to deprive the owner of the domain of the opportunity to defend him or herself before the domain is suspended is entirely unjustifiable.

Administration by a government agency

International law establishes that any body with regulatory powers over the media – including Internet-based media outlets – should be independent of the Government.¹⁵ In most

¹⁵ Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 18 December 2003, online at:

<http://www.unhcr.ch/hurricane/hurricane.nsf/view01/93442AABD81C5C84C1256E000056B89C?opendocument>

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democratic countries in the world, domain names are registered by independent organisations. In contrast to this general principle, the Regulations propose that Kazakhstan's web space will be administered by a Government agency. Together with the extremely vague rules relating to refusal to register, suspensions and deregistration, this introduces the very serious and unacceptable possibility of abuse of the system for political purposes. We recommend that urgent action is taken to prevent any such abuse, now or in the future.

Recommendations:

- The Regulations should be amended to provide for the following:
 - Kazakhstan's web space should be administered by a body that is independent of the government.
 - Registration of a .kz domain should be a purely technical process and impose no substantive restrictions. Applicants should merely be required to submit their name, contact details and the limited technical data required to register the domain.
 - There should be no requirement that the servers for a .kz domain be located inside Kazakhstan.
 - No domain name should be suspended or deregistered until a full judicial process has been gone through.

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ANNEX:

[08.06.2005] Regulations for the Allocation of Domain Space in the Kazakhstan Segment of the Internet

Acting Chairman of the Republic of Kazakhstan Agency for Informatization and Communication Order No. 88-b of April 5, 2005 on the Approval of Regulations for the Allocation of Domain Space in the Kazakhstan Segment of the Internet

In accordance with the Republic of Kazakhstan Law “On Informatization”, Republic of Kazakhstan Government Resolution No. 724 of July 22, 2003 “Re the Republic of Kazakhstan Agency for Informatization and Communication”, Government Program for the Formation of the E-Government Infrastructure in the Republic of Kazakhstan in 2005-2007, approved by Decree of the President of the Republic of Kazakhstan No. 1471 of November 10, 2004, for the purpose of establishing a unified procedure for the allocation of domain space in the Kazakhstan segment of Internet, I hereby order that

1. the enclosed Regulations for the allocation of domain space in the Kazakhstan segment of the Internet be approved;
2. the Department of Informatization and Legal Service (Zhailubayeva Asiya Seitzhapparovna) provide for the state registration of this order with the Ministry of Justice of the Republic of Kazakhstan;
3. Deputy Chairman of the Republic of Kazakhstan Agency for Informatization and Communication Esekeyev Kuanyshbek Bakhytbekovich be put in charge of execution of this order;
4. this order shall come into effect ten days after its official publication.

Acting Chairman

Concurred by:
Chairman,
Committee for National Security,
Republic of Kazakhstan
April 12, 2005

Approved by
Acting Chairman of the Republic of Kazakhstan and Agency for Informatization and Communication Order No. 88-b of April 5, 2005

Regulations for the Allocation of Domain Space in the Kazakhstan Segment of the Internet

1. General Provisions

1. The Regulations for the Allocation of Domain Space in the Kazakhstan Segment of the Internet (hereinafter, the Regulations) have been developed in accordance with the

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Republic of Kazakhstan Law “On Informatization”, Republic of Kazakhstan Government Resolution No.724 of July 22, 2003 “Re the Republic of Kazakhstan Agency for Informatization and Communication”, Government Program for the Formation of the E-Government Infrastructure in the Republic of Kazakhstan in 2005-2007, approved by Decree of the President of the Republic of Kazakhstan No. 1471 of November 10, 2004.

2. The Regulations shall determine the procedure for the allocation of domain space in the Kazakhstan segment of the Internet and cover all applications for the allocation of a domain name under the KZ domain and all subdomains.

3. Basic terms and definitions used in the Regulations shall have the following meaning:

1) authorized agency means a government agency implementing government policy and providing for government regulation of activities in the sphere of informatization;

2) domain name means a unique alphanumeric name denoting a domain in the space of Internet names hierarchy;

3) domain name KZ means the top level domain name corresponding to the two-letter code of the Republic of Kazakhstan in accordance with international standard ISO-3166;

4) domain space means the space of Internet names hierarchy;

5) Kazakhstan segment of the Internet means a totality of information resources and information systems the domain names of which contain domain name KZ;

6) RFC document means a standard determining the technical and administrative aspects of Internet functioning and accepted by the Internet Engineering Task Force (IETF) and Internet Engineering Steering Group (IESG) public organizations;

7) application means a request in due form submitted by an applicant to the registrar and containing all information required for registration (extension of the term of registration) of a domain name or revising some information submitted before;

8) registry means a database of registered domain names KZ;

9) administration of the registry means supporting the operation of the domain names registry, data transfer to the domain name system, and the possibility for registrars to update the registry;

10) domain name registration means the inclusion of data on the domain name into the Registry and the delegation of authority to manage the domain name to the registrant;

11) register means an authorized agency administering the Registry and supporting the operation of domain name KZ in the Internet, in accordance with the Agreement on the Management of Top Level Domain KZ concluded between the authorized agency and the register;

12) registrar means a legal entity that renders domain name registration services to registrants, enters the appropriate data in the registry in accordance with the Agreement (Contract) concluded between the register and the registrar, and exercises the registrant's rights with regard to management of the domain name in the register;

13) registrant means a physical or legal entity that has applied to the registrar for registration (revision, delegation) of a domain name and has submitted the appropriate documents and will be the owner of the domain name upon its registration;

14) Web-server means a server connected with the Internet and providing access to the Internet under HTTP and HTTPS protocols (RFC 2616);

15) DNS (Domain Name System) server means a server that renders domain name services as per the RFC 1034, 1035, 1122, 1123 standards;

16) Domain Name System (DNS) means a distributed database containing data on the correspondence between domain names and IP addresses (RFC 1034);

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17) root domain means the highest level of DNS hierarchy and is denoted by a period «.» (RFC 882);

18) first top level domain means the level of DNS hierarchy immediately below the root domain; it is the direct subdomain of the root domain (RFC 882);

19) second level domain means the level of DNS hierarchy immediately below the first level domain; it is the immediate (direct) subdomain of the first level domain (RFC 882);

20) third level domain means the level of DNS hierarchy immediately below the second level domain; it is the immediate (direct) subdomain of the second level domain (RFC 882);

4. The names listed below shall be reserved domain names that have predetermined destination:

1) ORG.KZ is reserved for the registration of third level domain names for nonprofit organizations and projects;

2) EDU.KZ is reserved for the registration of third level domain names for organizations–residents of the Republic of Kazakhstan that have licenses for educational activities;

3) NET.KZ is reserved for the registration of third level domain names for data transfer service providing organizations that have appropriate licenses from the authorized agency;

4) GOV.KZ is reserved for the registration of third level domain names for government agencies of the Republic of Kazakhstan;

5) MIL.KZ is reserved for the registration of third level domain names for agencies of the Republic of Kazakhstan Ministry of Defence;

6) COM.KZ is reserved for the registration of third level domain names for business entities.

The list of domain names reserved for special use may be supplemented by the register.

2. Specific features of domain space allocation in the Kazakhstan segment of the Internet

5. In the course of registration of a domain name, the registrar shall:

1) consider the application for registration of the domain name, executed in accordance with the Appendix hereto and submitted by the registrant, within 10 days of receipt thereof;

2) enter into an agreement with the registrant on registration of the domain name to specify the domain name registration services;

3) deny registration of the domain name in cases provided for under Item 7 hereof.

6. When applying for registration of the domain name, the registrant shall:

1) submit correct and complete information in the application for registration of the domain name either in electronic form or in writing, in accordance with the Appendix hereto;

2) submit information about DNS servers (at least, two) operating in the Internet and based in the Republic of Kazakhstan, in accordance with Internet standards RFC 1034, 1035, 1122, 1123 as of the date of application to the Registrar;

3) enter into an agreement with the registrar on registration of the domain name to specify the domain name registration services.

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3. Denial of domain name registration

7. Registration of a domain name may be denied if:

- 1) the application was not submitted in accordance with the form provided for in the Appendix hereto;
- 2) the domain name was already registered by the date of application;
- 3) the application fails to meet the Internet standards listed in Item 6 (2) hereof;
- 4) the domain name is listed among the reserved domain names.

In cases provided for under Item 7 hereof, the registrar shall, within the period of 10 days, notify the registrant of the denial of domain name registration with the explanation of the causes of and reasons for the denial.

4. Suspension of domain name registration

8. Registration of a domain name may be suspended in the following cases:

- 1) if the data submitted by the registrant for registration is found to be incomplete or incorrect;
- 2) if WEB-servers the domain names of which are part of the domain name being registered are based outside the Republic of Kazakhstan;
- 3) if the basis onto which the name was registered is changed;
- 4) by court decision in accordance with Republic of Kazakhstan law;
- 5) by request from the registrant.

9. In cases provided for under Item 8 hereof, the registrar shall suspend registration of the domain and notify the registrant of suspension for a period not exceeding 10 days, unless a longer term has been specified by court decision or agreement between the registrar and the registrant. Upon expiration of this term, the registrant shall submit additional data or eliminate the cause of suspension.

10. In the case provided for under Item 8 (4) hereof, the registrar shall immediately suspend the registration, make the appropriate entry in the registry, and notify the registrant accordingly.

11. If domain name delegation has been suspended, such delegation shall be recommenced upon the registrant's request.

5. Domain name deregistration

12. The domain name shall be deregistered, if additional data was not submitted or the cause of suspension was not eliminated.

13. Registration of the domain name shall be resumed upon submittal of additional data or elimination of the cause of suspension.

14. In the case provided for under Item 12 hereof, the registrar shall effect deregistration without delay, make the appropriate entry in the registry, and notify the registrant.

15. If a violation of these Regulations is revealed, the authorized agency may file a deregistration suit with court of law.