Translation from Norwegian

SØR-TRØNDELAG DISTRICT COURT
Sør-Trøndelag tingrett

JUDGEMENT

Delivered:	28 June 2012, Sør-Trøndelag District Court, Trondheim
Case no.:	11-156571TVI-STRO
Presiding:	District Court Recorder, Mr Hans Hugo Kristoffersen
Concerning:	Construction and practicing of rules for internet domains

Elineweb AS	Mr Joar Heide, Attorney
versus	
Uninett Norid AS	Mr Eirik Djønne, Attorney

No restriction on publication.

The Judge delivered the following

JUDGEMENT:

This matter concerns construction (interpretation) and enforcement of rules for internet domains at the national level, the question of whether agreements done between the plaintiff, Elineweb AS (Elineweb) and the Dutch company CoDNS/ EuroDNS (CoDNS) are in conflict with the Norwegian regulations, and what the consequences of any such conflict might be.

The address system on the internet relates to IP (Internet Provider) addresses, which consist of sequences of numbers. Each computer on the internet has such a number sequence. In order for the users to avoid having to remember these sequences, the domain system (DNS) connects unique domain names to the IP addresses.

DNS has a hierarchical structure, where the top level is called the DNS root. The top domains are the highest level below the root. There are two types of top domains: country codes (for example .no, .se, and .uk) and the generic top domains (such as .com, .org, and .net). In the first case the rules are stipulated nationally, where as in the second case they are stipulated globally.

Uninett Norid AS (Norid) enforces the rules for the Norwegian top domain .no. Norid is a subsidiary of the UNINETT group, which is owned by the Norwegian State, but is established in the private sector. Norid deals with applications, develops regulations, and is responsible for the technical running of the naming service, so that the Norwegian Internet is globally accessible at all times. The service is regulated by a special regulation with the Norwegian Post and Telecommunications Authority (NPTA) as the supervisory authority. Norid is not an administrative body, and allocation of domains is done according to private law rules. The regulations are enforced by the use of civil private contracts.

Until 19 February 2001, co.no was one of a long list of banned or reserved 2- and 3-letter domains. The reason they were on the prohibition list was mainly because they were identical to existing top domains, and these subdomains were banned for technical reasons. After the technical challenges were resolved for these domains, they ultimately became permissible to register.

In February 2001 the Allocation Rules (also called domain name policy) for the country code domain .no were liberalised. In May 2001 the Ministry of Transport established a working group, whose job was in part to examine the administration of the .no domain, the need for a complaints system in case of disputed domain names, and withdrawal of allocated domain names. The result of this work was that the Ministry of Transport and the NPTA was assigned the overarching political and supervisory responsibilities, an Alternative Dispute Resolution (ADR) Committee (*domeneklagenemnd*) was established, and the relationship between the government and the registry Norid was determined in a general regulation that provided the frameworks for administration of the .no domain.

The Act relating to Electronic Communication (the Ecom Act) and Regulations relating to Domain Names under the Norwegian Country Code Domains (Domain Regulations) were adopted in 2003.

It has been stated that Elineweb in connection with liberalisation of the Allocation Rules in

2001 applied for and was awarded the domain co.no. The company has subscribed to the domain since February 2001 and until today's date. The considerations that the decision to remove the domain from the prohibition list was based upon have not been the subject of evidence. The defendant has stated that some of the archival material stored in the data bases at that time has been lost.

Elineweb was both the domain holder and registrar and signed, in connection with the application for the domain name, an applicant's declaration for domain holders and a registrar agreement with Norid as contract counterparty.

Norpol is an advisory body that assists with development of regulations for the .no domain. Norpol has representatives from the private sector, government, Internet industry, consumer authorities and other relevant interest groups. Norid presented a proposal to Norpol to reserve co.no for future use as a category domain in a memo dated 29 October 2008. At a meeting in Norpol on 14 November 2008, the question of adding co.no to the prohibition list again was discussed at Norid's suggestion. In Norid's opinion, this domain should be reserved in the same way as com.no, both as a domain that could later become a category domain, and "to avoid misunderstandings where people believe that it is an official category domain". The category domains are located at a level below the top domains. Examples are dep.no (for ministries), kommune.no (for local authorities) and priv.no.

On 6 July 2009 a notice was sent to Norid's registrars that Norid would be making minor regulatory changes in the regulations, Appendix A. A registrar says the Domain Regulations, section 2, is defined as "a business that has signed an agreement with a registry for access to submit applications and change notices to the registry on behalf of applicants/holders of domain names within the Norwegian country code top domains."

From the notice it is clear that:

> The domain *co.no* is reserved as a future category domain on a par with com.no.
>
> The adding of new names to the prohibition/reserve list will not have a retroactive effect. This means that names already registered will not be removed, even if they are added to the list. However, if the name is later removed, new registration will be blocked. Furthermore, such names cannot be transferred to a new domain holder. This is the case for *co.no.*

In May 2008, Elineweb, care of Mr Alexander Tvete (Tvete) was contacted by Mr Sander Scholten (Scholten). He represented the Dutch company CoDNS. E-mails were exchanged in 2008, but the parties failed to reach an agreement. The e-mail exchanges continued in 2009. In early September 2009, Scholten visited Tvete in Tvete's home at Saltnes in Østfold (eastern Norway). A contract was negotiated regarding co.no and signed on 10 September 2009.

In November 2009, Mr Jean Christophe Vignes, on behalf of the Dutch company, contacted the managing director of Norid regarding co.no by e-mail.

On 16 August 2010, Tvete and Scholten, on behalf of Elineweb and CoDNS, signed a supplemental agreement. The plaintiff has justified the supplemental agreement by stating that the parties in the months between the two signatures became aware that co.no was on the prohibition list.

As a result of the signed contracts, changes in articles of association were made for Elineweb. Article 5 states that CoDNS shall be entitled to appoint one board member and one deputy of a total of two board members and two deputies. Article 9 states that all share transfers must be approved by the board, and Article 10 that the company's articles cannot be altered except with the consent of the company CoDNS.

In autumn 2010, Elineweb in conjunction with CoDNS started the marketing of sales of subdomains by launching a so-called "sunrise period" from 1 November 2010. In the launch it was stated, among other tings, that all over the world, 20 per cent of all country code domains have recognisable co.xx endings. Among the examples quoted was co.uk. Using a co.no domain "you also have the opportunity to present your international presence in Norway" it said in the launch.

In October 2010, Norid published information on its webpage for registration under co.no:

> **Registering domains within co.no**
>
> The domain co.no is registered by the Norwegian organization ELINEWEB AS. It is run by the company CoDNS BV, which is offering sub-domains of co.no to other entities. The domain is not one of the official second-level category domains administered by Norid, and the use of the domain in this manner is not endorsed by us.
>
> While registration of third-level domains within co.no is not prohibited, it does have some implications that prospective domain holders should be aware of:
>
> 1. A holder of a sub-domain under co.no is solely dependent on the decisions made by the holder of co.no. Sub-domains within co.no are not bound by the domain name policy for .no, the Norwegian regulation on domain names or by decisions by the domain complaints board, and they are not protected by these policies and regulations in the manner that ordinary .no-domain name holders and third parties are.
>
> 2. If the holder of co.no fails to fulfil his obligations to Norid, the domain name may be deleted in accordance with the domain name policy, item 12. All existing sub-domain names under co.no will subsequently be lost.
>
> 3. While 1) and 2) is true for any second level domain under .no, there is an additional complication for co.no. The domain co.no is on a "prohibited/reserved"-list (Appendix A in the domain name policy). This means that while the current holder will not lose their registration, they cannot transfer the domain to another holder. If the current holder ceases to exist or the domain is deleted for any other reason, the domain co.no will be put on hold and not released for new registrations.

Norid published corresponding information to its registrars by e-mail of 8 October 2010.

On 12 October 2010, the Norwegian Consumer Council (*Forbrukerrådet*) followed up by reiterating Norid's information about co.no. The political advisor in the NCC, Mr Svenn Richard Andersen, stated that "insofar as Norwegian consumers consider it useful to register a separate domain, we ask all to study carefully the CoDNS conditions".

Norid approached Elineweb by letter dated 18 February 2011. In the letter, Norid expressed concern about the marketing related to co.no. In the letter, Elineweb was asked, among other

things, to send Norid information about contract matters with CoDNS or others, and possibly any financial terms that were associated with the contracts, and how many sub-subscriptions existed. The letter concluded with a request to cease marketing and registration until a clarification had been obtained.

The application was replied to by e-mail by Tvete. He denied that the guidelines had been broken and refused to submit the requested details, referring to the information as containing business plans and being of a confidential nature. Tvete suggested that a telephone conference be held.

Norid answered the e-mail on 25 February 2011. The demand for information was upheld, albeit such that amounts and percentages could be erased in the documents. The proposal for a telephone conference was rejected until a reply was given.

This email was replied to by Mr Joar Heide, Attorney, on behalf of Elineweb, by letter dated 28 February 2011. Reference was made to Point 15.5 in the domain name policy for .no. It was argued that the policy did not grant Norid authority to demand the sought-after information. Moreover it was argued that Elineweb had suffered commercial difficulties due to the information that Norid had published. The letter concluded by asking for a justification for what laws or provisions Elineweb might have broken.

This letter was answered by Mr Eirik Djønne, Attorney, on 3 March 2011. The demand for information was upheld. Reference was made to the information duty in points 15.3 and 15.4 in the domain name policy for .no. Attention was drawn to the fact that failure to observe them could lead to deletion; see point 12 in the domain name policy for .no.

Further exchanges took place during spring 2011 without reaching a resolution. Elineweb took out a writ of summons on 26 September 2011. In the preparations for the case legal settlement was attempted, but the parties were unable to settle the matter.

The main hearing was held on 24 and 25 May [2012]. Five witnesses were heard and such documents as noted in the Court Record were presented.

Elineweb has essentially asserted as follows:

Any demand that Norid may have had to withdraw the domain must be deemed abandoned, see Disputes Act, section 18-4. Norid presented a demand for an independent judgement to have the domain withdrawn and Norid was to be awarded costs. The demand was withdrawn after it was established in a planning meeting without Elineweb having accepted that the underlying demand did not lapse at the same time. It is not sufficient to avoid the lapse of the demand that Elineweb accepts that the countersuit is withdrawn. The consent must also embrace that the underlying demand persists. No claim for rejection has been presented. Norid therefore only has a claim for seizure of the domain if new circumstances arise that provide a basis for so doing.

The minimum requirements for allocation of domain names follow from the Domain Regulations, section 3. The regulatory changes that were introduced in 2009 do not meet the minimum requirements and are therefore invalid.

It is not clear from the regulations that these minimum requirements do not apply

individually, but must be weighted. If the claims are weighted, it is not clear from what has happened that Norid has made a genuine weighting of intersecting concerns, so that Elineweb must accept that other concerns must take precedence.

The application of the rules is clearly discriminatory towards Elineweb since the general right to transfer does not apply to the company. Reference is made in this respect to a German decision that caused the rules to be changed.

Nor is the regard for predictability satisfied. Elineweb had good reason to expect that the disposition right for the domain would not be restricted after it was removed from the prohibition list in 2001.

It is clear from section 3, letter f) that the rules are intend to protect the interests of internet users individually and jointly. This requirement is not met in any respect.

Nor does the regard for international development suggest such a restriction of the right of disposition. Not a single country can be identified where restrictions have been made in the co.xx domains.

It follows from the rules that both Norpol and the Norwegian Post and Telecom Authority must be presented with the question of introduction of new names on the prohibition list. This requirement was not met simply by having a representative from the NPTA in Norpol.

Norid has no basis for confiscation based on current regulations since the domain cannot be deemed to have been transferred to CoDNS.

It is unclear what part of the agreement with individual domain holders, compared with the name regulations, is asserted when it is argued that there exists a breach of the agreement.

It is argued by the other party that the agreement with CoDNS represents a circumvention of the prohibition of transfer. The agreement with Norid does not authorise a ban on disposition of the domain in the manner that Elineweb has done.

The original agreement with CoDNS that was signed before the parties learned about the change in regulations, assumes that the domain is not transferred, see provisions concerning possible later sale and pricing.

Both the original agreement and the change agreement are limited in time and presuppose that a final agreement is reached between the parties. It has been decided in the change agreement that the domain will forever remain in Elineweb.

The provisions in the regulations were introduced to limit the opportunity to dispose over the domain and thus secure the interests of the customers and contract parties.

The agreements between Norid and Elineweb establish no ban on sales of shares in the company.

No lump sum compensation has been received, which suggests that no transfer has been made. On the contrary, the compensation is determined on the basis of a revenue distribution.

The contracts between Norid and Elineweb establish no ban on subrental or licensing. Nor are we faced with subrental in this case.

Compensation is demanded for the financial loss that Elineweb has suffered as the result of Norid's actions.

As liability basis is argued:

- Non-valid rule without considering domain holders' interests or inviting domain holders to provide submissions.
- Incorrect interpretation of special regulations with associated "threat" to confiscate domain.
- Unnecessary and unjustified communication with outside world.
- Lack of willingness to correct negative communication despite extensive information being provided that domain was not transferred.

The economic loss includes delayed start-up of the business from 24 February 2011 and until today's date and the loss of reputation as the result of communication with the outside world and weakened relations with customers. There is a clear causal relationship between the injurious actions and the economic loss suffered. The measurement of the loss must be made by best judgement since it is impossible to prove the size of the loss, see *Rettstidende Rt* 1990, page 607.

Elineweb has entered the following particulars of claim:

1. The change in the domain name policy that occurred on 13 July 2009 and which meant that co.no was placed on the list of prohibited domain names is invalid.
2. Uninett Norid AS has no basis for confiscation of the domain www.co.no.
3. Uninett Norid AS promises to delete the negative discussion of Elineweb AS and exploitation of the domain www.co.no which is published on the company's home page.
4. Uninett Norid AS promises to write to all registrars and correct the information sent earlier regarding exploitation of the domain www.co.no in such a way that it is clear that exploitation of the domain complies with the regulations.
5. Uninett Norid pays compensation to Elineweb AS to be determined by the court's discretion.
6. Uninett Norid AS shall cover the costs of the case.

Norid has essentially asserted as follows:

After objections were raised in the planning meeting contrary to the original claim submitted, Norid changed its claim to a claim for acquittal. In a crossing pleading, the other party stated that it was difficult to see "that a judgement can be given to say that use of the domain as a category domain is unlawful". If the claim was not changed, Elineweb would demand that the counterclaim was denied. It is argued that the claim can be withdrawn from this hearing without it being stated, if the other party has asserted denial of consideration of the claim, see Norwegian Dispute Act, section 18-4, second paragraph, letter c.

Norid requested some information that Elineweb refused to give. The information that Norid

asked for was only given after Elineweb was ordered by the court to present them. There is no decision on Norid's part in this case. Nor is there any procedural notice prior to the summons, which might have significance for the decision on legal costs.

The agreements with the domain holders give user rights for the domain names, not property rights. Tvete had no justified expectation that he would be able to dispose over co.no like he did. The domain probably disappeared from the prohibition list in 2001 by accident. It was lying latent until 2008 when Scholten made contact with Tvete.

It is argued that the regulatory change upon return of the domain co.no to the prohibition list on 13 July 2009 is valid, with the effect that the domain can no longer be transferred to others. In the previous hearing, everyone voted for the domain to be put on the prohibition list. Members of Norpol who have testified, believe that the regulatory change occurred in line with the regulations. If the NPTA had harboured objections, this would have been apparent from the consultative hearing.

There is no practice for a regulatory change to be submitted to the domain holder. The domain holders are obliged to follow the regulations as they apply at all times. This assumes that domain holders regularly check Norid's home pages where all changes are announced.

On 6 July 2009, Elineweb was also notified about this in its capacity of registrar. Elineweb did not contact Norid to clarify the relationship with the current domain name policy.

Elineweb is deemed to have transferred the domain in violation of the ban, or unlawfully circumvented the ban by the agreement of 10 September 2009. Even though there is no formal declaration of transfer, the reality is a transfer. In Norid's view, Elineweb is attempting to circumvent the domain name policy.

Moreover, Elineweb must be deemed to have acted in contravention of a loyalty obligation and good practice between businessmen. This is true for Elineweb's actions both as a registrar and a domain holder, in relation to both the registrar agreement and the applicant's declaration. There is no liability-inducing action by Norid that would lead to compensation liability. The self-declaration (applicant's declaration) by the domain holder obliges Elineweb to follow the regulations as they apply at all times. Norid can recall or delete a domain under the authority of the naming policy, point 12, and in particular point 12.1, due to any factor that represents a default of the plaintiff's responsibility or obligations under the regulations or applicant's declaration. Reference is also made to the unwritten loyalty duty in the Marketing Control Act, section 25.

Elineweb has not proven any economic loss and cannot therefore be heard in its compensation claim.

Norid asked for the following particulars of claim to be entered:

1. Uninett Norid AS is acquitted.

2. Uninett Nord AS is awarded legal costs.

The Court remarks:

The court will first consider the question of whether Norid's possible demand to recall the domain was abandoned, see Disputes Act, section 18-4.

Norid presented the claim in its Reply for an independent judgement that the domain should be recalled or deleted, and subsidiarily that co.no should be found unlawful. In the planning meeting on 1 November 2011 the claims were discussed and in this connection the following was minuted:

> To what extent it is necessary to pinpoint the claims more fully prior to court settlement attempts will be clarified between the counsel.

In a pleading of 23 November 2011 the plaintiff argues:

> In addition to the objections that are presented above concerning the formal grounds for the claim by Norid, the format of the claim is problematic. It is unclear to us whether they demand a judgement that the domain should be deleted or recalled. It is also difficult to see that a judgment can be given whereby the use of the domain as a category domain is unlawful. If the claim is upheld we will demand that the counterclaim is rejected.

In a crossing pleading of the same date, Norid changed its claim to an acquittal claim.

The Disputes Act, section 18-4, reads as follows:

> (1) When a claim in a case is announced to the opponent or presented in a court hearing, the claim is considered to be abandoned if is withdrawn from consideration before the court's decision is made. The opponent can demand that the matter be brought up for legal decision under section 9-7.
>
> (2) The claim can be withdrawn from consideration without this being announced if the opponent:
>
> a) agrees thereto;
> b) has not submitted a reply, or;
> c) has claimed that consideration of the claim be rejected.
>
> (3) For consideration in the Conciliation Court the claim can always be withdrawn from further consideration without announcement, until the claim is decided by the Conciliation Court.
>
> (4) A new action for the claim may not be raised before the legal costs awarded to the opponent are paid.

It follows from the above that the question of claim formulation was the subject of discussion, and that objections were raised in relation to the formulation in the planning meeting. This was followed up by Attorney Heide in the aforementioned pleading where he announced rejection of the claim if the claim was upheld. When the opponent chooses to change the claim in such a situation, the party must be able to withdraw the claim even if the opponent had not formally submitted a claim for rejection – without the claim having to be held to be abandoned.

Elineweb must in any case be considered to have given its consent for the change in claim, see section 18-4, second paragraph, letter a. In connection with this provision, *Schei et.al*

comments as follows, in his Commentary Edition of the Dispute Act (*Kommentarutgaven til tvisteloven*):

> In the second paragraph, letter a, it is highlighted that the case can be withdrawn if the defendant consents thereto. Therefore the defendant does not need to consent to anything more, for example that the matter could be withdrawn without the claim being abandoned. Under the Disputes Act, section 67, first paragraph, there was some lack of clarity about this – but in Norwegian Public Reports NOU B, page 882, this point in particular is emphasised so that the consent must only cover the withdrawal of the case.

The Court thus finds that Norid has not abandoned the claim by altering the claim as has occurred.

The court will then move to discussing the material issues that the case has raised.

It follows from the Act of 4 July 2003, no. 83 (The Ecom Act), section 7-1, that "the authority can appoint other public bodies or private to administer numbers, names and addresses for further delimited purposes, including address data bases". It is further clear from section 10-1 of the Act, that "the authority shall supervise that criteria stipulated in or in pursuance of the Act are satisfied" and that "the authority may make use of assistance from others in the execution of its supervision". In accordance with the provision the authority can issue regulations for supervision. In accordance with the said provisions a Regulation on Domain Names under Norwegian Country Code Top Domains (the Domain Regulations) has been issued by Crown Prince Regent's Decree of 1 August 2003.

It follows from the Regulations, section 4, that the register unit shall demand that a person applying to register a domain name under the Norwegian country code top domains shall provide an affirmation that contains the applicant's confirmation that registration and/or use of the name that they seek to register is not in violation of the Allocation Rules in section 3, among other criteria.

It follows from section 3 that the Allocation Rules must be publicly published and that they shall at minimum be designed so as to ensure cost-efficiency, high technical quality, non-discrimination, promote transparency, promote predictability, protect the interests of internet users, individually and jointly, and ensure national interests and take account of international development in the internet field. Moreover it is clear from the regulations that before adoption and significant change in the Allocation Rules, one must "solicit views from user representatives and the authorities. The NPTA shall be informed of all changes."

A proposal to reserve co.no for future use as category domain was – as already noted – laid before Norpol by memorandum of 29 October 2008. The proposal was justified – apart from co.no being able to be reserved for future use as category domains – by a desire to avoid misunderstandings "where people believe that this is an official category domain".

The matter was considered at Norpol's e-mail meeting of 14 November 2008. This is clear in part from the meeting minutes under the section entitled "Change of Annex A".

> Norid has a proposal for a domain that should be reserved for future use of the category domains: co.no. The domain should, Norid believes, be reserved in the same manner as com.no, both as a domain that could be a future category domain, and to avoid misunderstandings where people believe that this is an official category domain.

> The registration of new names in the prohibited/ reserve list will not occur with retrospective effect. This means that names already registered will not be removed even if they are added to the list. If the name is later deleted, however, it will be blocked for new registration. Nor can such names be transferred to a new domain holder. This will be the case for co.no.
>
> Norpol endorsed Norid's proposal.

It is not clear from the memo that there was debate about the proposal. Nor has any material presentation been submitted by Norid beyond what is stated in the memo.

Norid is not an administrative body. The standards of the Public Administration Act therefore do not apply in the present case. In this regard refer to section 3 in the Domain Regulations. The regulations mention what considerations apply when allocating domain names.

Elineweb has raised a series of objections against the change in the domain name policy that occurred on 6 July 2009 and asserts that the policy change that was introduced in 2009 does not meet the minimum standards and is therefore not valid.

Elineweb has argued that it follows from the rules that both Norpol and the NPTA must be presented with the question of introduction of new names to the prohibition list. This requirement was not fulfilled by having a representative for the NPTA sitting in Norpol.

The Section Manager in the NPTA, Mr Ørnulf Storm, explained in court that the NPTA was informed about the changes to the Allocation Rules by virtue of participating in Norpol. The court finds that Norid's information duty towards the NPTA must be held to be satisfied by the arrangement that has been established whereby the NPTA is represented in Norpol.

Elineweb has also argued that the Regulation must be understood such that all considerations mentioned in the Regulations must be satisfied as a minimum.

The court agrees with the plaintiff that it does not state expressly in the wording of the provision that weighting of the different considerations should be undertaken. In practice nonetheless it will be the case that different considerations must be balanced in regard to each other and that some considerations will thus receive greater weight. However, one must be able demand that the balance of the different considerations is justified so that the assessment can be scrutinised. The normal rules about being to the point, unfair discrimination and extraneous factors must also apply when applying the law in this field.

Elineweb has also argued – on the assumption that weighting is permitted – that there is also no indication from what has occurred as to whether Norid has made any real weighting of crossing concerns so that Elineweb must accept that other concerns must take precedence. This is the case in part for the demand for predictability (letter e), that the rules must protect the interests of internet users individually and jointly (letter f), that the rules must be non-discriminatory (letter c), and that regard for national interests and the international development suggest a restriction of the disposition right (letter g).

The justification that Norid has given for putting co.no on the prohibition list is that the domain in the first place could provide a future category domain, and secondly "to avoid misunderstandings where people believe that this is an official category domain".

Furthermore, in the case preparations and main hearing, Norid has justified their decision to put co.no on the prohibition list, by referring to views obtained from Norpol's members such as the Confederation of Norwegian Enterprises (NHO), Norwegian Consumer Council, Norwegian Industrial Property Office (Patent Board), and the registrar association Dot-Enno. Common to the objections that were raised by these members is that the co.no domain appears to be a category domain and is therefore misleading. It is argued that this in turn can have unfortunate consequences for Norwegian users and Norwegian business in general, since enterprise names/trademark names under .no can feel pressured to also have to register under co.no to prevent others registering under that domain. It was argued that this could lead to unfortunate costs for the enterprises.

The solution that Norid chose, was to put this domain on the prohibition/reserve list, but so that the names which were already registered, would not be removed, even if they entered the list. If the name was later removed, however, it would be blocked from new registration and could not be transferred to a new domain holder.

In the court's view the decision that led to co.no again being enrolled on the prohibition list/ reserve list was properly justified and rooted in several of the considerations that are mentioned in the Domain Regulations, section 3, second paragraph, letters a) to g). All considerations mentioned in this provision can hardly be said to be fulfilled by the decision. In the court's view, one cannot read the provision to mean that all criteria must be fully satisfied. Such a construction of the rules would place too strong a constraint on Norid's opportunity to administer .no. The regard for the individual user and the regard for predictability are – as the decision has been formulated – maintained by the decision not being given retroactive effect. Elineweb therefore cannot succeed when arguing that the change in the regulations that occurred on 13 July 2009 and which meant that co.no was put on the prohibited domains list was invalid.

One of the claims by Elineweb is that Norid has no basis for confiscation of the domain co.no. Elineweb has in this connection avowed that the agreement between Norid and Elineweb does not limit the right to sell shares in the company. No lump-sum amount was received, which suggests that no transfer was made. Reference is made to the agreements between Norid and Elineweb which also do not place a ban on subleasing or licensing. Indeed, there is no sublease in this case.

Elineweb took out a summons against Norid while the question of possible confiscation of the domain was in an investigative phase. Norid has therefore not reached any decision that can be attacked. Norid has however not demanded that this part of the case be rejected, but entered a claim of acquittal. Norid has argued that Elineweb, by making a contract with CoDNS, has transferred the domain in contravention of the ban, or unlawfully circumvented the ban. From Norid's viewpoint, the reality of the agreement is a transfer, and thus a circumvention of the regulations. Moreover, Norid has argued that Elineweb's actions, both as registrar and as domain holder are in contravention of its duty of loyalty and good practices between men of business.

In the applicant's declaration lodged with the application for a domain name the applicant has agreed that the registration unit can withdraw an allocated domain name, for instance when it is clear that the allocation is in violation of factors that are mentioned in the applicant's declaration or regulations in some other way.

When a domain name is put on the prohibition list, it means that the name is blocked for new registration. Also, it cannot be transferred to a new domain holder. This provision – as it is formulated – means a ban on sale of the usage rights for the domain to another enterprise. The ban can also embrace other transfer of management, such as hire or licensing to other enterprises. On the other hand, it will not affect sale of the company's shares. In the latter case the enterprise will continue to have control over the usage rights.

The agreement and supplemental agreement signed between Elineweb and CoDNS mean that the domain will remain with Elineweb. The agreement is based on division of the profit, with one half to each of the enterprises. The agreement contains provisions about sale of shares in Elineweb. These provisions cannot be said to be affected by the ban on transfer, provided the usage right for the domain remains in the enterprise. Nor can the provisions concerning board representation in Elineweb be said to contravene the ban on transfer.

Furthermore, the court cannot find with Norid that Elineweb's actions both as registrar and domain holder conflict with the loyalty obligation and good practices between men of business. The point of departure must be that rights can be transferred between legal entities. An intrusion into the right to dispose of rights would demand indisputable support in the set of contracts and regulations. In this court's view the agreement does not by its nature suggest a circumvention of the usage regulations, but is rather an adjustment to the regulations in force. Reference is made in particular to the supplemental agreement. In light of a concrete assessment of the facts in the case, the court finds that Elineweb's actions are not in violation of good business practices, see the Marketing Control Act, section 25.

Elineweb has also presented a claim whereby Norid shall be bound to delete the negative discussion about Elineweb and utilisation of the domain co.no, which is published on Norid's home page, and that Norid shall be bound to write to all registrars and correct the information that was sent out earlier regarding utilisation of the domain co.no.

The information that was published on Norid's home page and sent to Norid's registrars in October 2010 must be seen in light of the information that was available about the domain co.no at the time in question on the domain's home page. In light of the information that now exists about the contracts between Elineweb and CoDNS, Norid's home page must announce that the agreement between Elineweb and CoDNS is not in violation of current sets of agreements. Based on earlier information sent to Norid's registrars, Norid is bound to send corresponding information to its registrars.

Elineweb has raised a compensation claim for financial losses suffered. No calculations of economic loss have been submitted, but the claim asks for the loss to be stipulated by discretion. The loss is justified by the delayed start-up of the activity from 24 February 2011 until today's date. It is further justified by the loss of reputation as a result of Norid's communication to the outside world, which has compromised Elineweb's relations with its customers.

The court has found that the criteria for demanding compensation do not exist in this case. The reason why Norid published the information was the information on the co.no homepage in autumn 2010. This information gave reason to believe that the rights of the domain name were transferred to CoDNS. Norid therefore asked for further particulars by letter dated 18 February 2011. Elineweb was asked among other things to send to Norid details of the agreement relationships with CoDNS or others, and possible financial terms that were

associated with the agreements, and how many sub subscriptions existed. The company denied breaking any guidelines, but refused to send the requested information, stating that the information contained business plans and was confidential in nature. The information was only presented in the court preliminaries after the court had ordered the party to present the information. In the court's view, Elineweb must bear the responsibility that the case proceeded as it did. The court therefore cannot see that there is any basis for liability for presenting a compensation claim against Norid.

Moreover, any financial loss has not been sufficiently proven.

The compensation claim is not upheld.

Legal costs.
The parties have succeeded with their respective claims. The overall result offers no grounds to award either party compensation for legal costs under the rules of the Disputes Act, Chapter 20.

This judgement was not delivered within the legal deadline. This was due to processing of other cases in the period after the main hearing in this case.

Conclusion of Judgement:

1. Uninett Norid AS has no basis for confiscation of the domain www.co.no.
2. Uninett Norid AS must announce on its website that the agreement between Elineweb AS and CoDNS/ EuroDNS does not violate current regulations.
3. Uninett Norid AS must write to its registrars to state that the agreement between Elineweb and CoDNS/ EuroDNS does not violate current regulations.
4. Uninett Norid AS is acquitted of other claims.
5. Compensation for legal costs is not awarded.

Court adjourned

Hans Hugo Kristoffersen (sign.)
Hans Hugo Kristoffersen

Guidelines for Appeal in Civil Case enclosed.