

Report of Public Comments

Title:		Proposal for a Specification 13 to the ICANN Registry Agreement to Contractually Reflect Certain Limited Aspects of “.Brand” New gTLDs																
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Prepared By:																		
Comment Period:		<table border="1"> <tr> <td colspan="2" style="text-align: center;">Important Information Links</td> </tr> <tr> <td colspan="2" style="text-align: center;">Announcement</td> </tr> <tr> <td colspan="2" style="text-align: center;">Public Comment Box</td> </tr> <tr> <td colspan="2" style="text-align: center;">View Comments Submitted</td> </tr> </table>		Important Information Links		Announcement		Public Comment Box		View Comments Submitted								
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Section I: General Overview and Next Steps																		
<p>ICANN posted a proposal requested by the Brand Registry Group for public comment to give an opportunity for the community to review and provide feedback. The proposal would incorporate a new Specification 13 to the New gTLD Registry Agreement, which would be available to a Registry Operator that operates a TLD that ICANN determines qualifies as a “.Brand TLD”. ICANN sought public comment on all aspects of the proposal.</p> <p>ICANN also posted with the proposed draft of Spec. 13 a position statement of the Brand Registry Group in support of the proposed draft.</p> <p>The body of comments received has been analyzed and taken into account by ICANN as described below.</p>																		
Section II: Contributors																		
<p><i>At the time this report was prepared, a total of 42 community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor’s initials. In addition, the analysis provided in this report is preliminary and may change after further consideration and community consultation.</i></p>																		
ORGANIZATIONS AND GROUPS:																		
<table border="1"> <thead> <tr> <th>Name</th> <th>Submitted by</th> <th>Initials</th> </tr> </thead> <tbody> <tr> <td>New TLD Applicant Group (NTAG)</td> <td>Sarah Falvey</td> <td>SF</td> </tr> <tr> <td>Authentic Web Inc. (Authentic Web)</td> <td>Peter LaMantia</td> <td>PL</td> </tr> <tr> <td>SLAM Strategy</td> <td>Shaun Le Cornu</td> <td>SL</td> </tr> <tr> <td>Valideus Ltd. (Valideus)</td> <td>Brian Beckham</td> <td>BB</td> </tr> </tbody> </table>				Name	Submitted by	Initials	New TLD Applicant Group (NTAG)	Sarah Falvey	SF	Authentic Web Inc. (Authentic Web)	Peter LaMantia	PL	SLAM Strategy	Shaun Le Cornu	SL	Valideus Ltd. (Valideus)	Brian Beckham	BB
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Authentic Web Inc. (Authentic Web)	Peter LaMantia	PL																
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KPMG International Cooperative (KPMG)	David Green	DG
QVC, Inc. (QVC)	Christopher Mackey	CM
British Broadcasting Corporation Research & Development (BBC R&D)	Zillah Watson	ZW
Reckitt Benckiser	Sarah Walker	SW
Banco Bilbao Vizcaya Argentaria, S.A. (BBVA)	Irene Rodriguez Alonso	IRA
Hong Kong Internet Registration Corporation (HKIRC)	Henry Chan	HC
HSBC Holdings plc (HSBC)	Martin Sutton	MS
Richemont DNS Inc. (Richemont)	Richard Graham	RG
Google Inc. (Google)	Leigha Weinberg	LW
FairWinds Partners	Stephanie Duchesneau	SD
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Intellectual Property Constituency (IPC)	Brian Winterfeldt	BW
Wilmar International Ltd. (Wilmar)	Bart Lieben	BL
IEEE Global LLC (IEEE Global)	Prakash Bellur	PB
Microsoft Corporation (Microsoft)	David Jaquette	DJ
Domain Name Association (DNA)	Kurt Pritz	KP
Hogan Lovells	David Taylor	DT
Yahoo! Inc. (Yahoo!)	Laura Covington	LC
Key-Systems GmbH (Key-Systems)	Volker Greimann	VG
MarkMonitor, Part of Thomson Reuters (MarkMonitor)	Kiran Malancharuvil	KM
European Communities Trade Mark Association (ECTA)	Domenico de Simone & Marie-Emmanuelle Haas	DD, MH
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At-Large Advisory Committee (ALAC)	Heidi Ullrich et al.	HU et al.
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National Cable & Telecommunications Association (NCTA)	Jill Lockett	JL
Katten Muchin Rosenman LLP (Katten on behalf of Specific Brand Owners)	Brian Winterfeldt	BW

Blacknight Internet Solutions Ltd. et al. (Blacknight et al.)	Michele Neylon	MN
EuroDNS	Luc Seufer	LS
GoDaddy	James Bladel	JB
Web.com	Bob Wiegand	BW
Enom / Name.com	Jeff Eckhaus	JE
Realtime Register	Theo Geurts	TG
NetEarthOne	Chris Pelling	CP
HostEurope Group	Oliver Hope	OH
Astutium Ltd.	Rob Golding	RG
Nordreg AB	Benny Samuelsen	BS
.MUSIC	Constantine Roussos	CR

INDIVIDUALS:

Name	Affiliation (if provided)	Initials
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John Berryhill		JB

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

Support

The ICANN Board should approve the language of Specification 13 as quickly as possible as part of the standard Registry Agreement for eligible .BRAND applicants in order to allow .BRAND applicants to move through the contracting process and on to delegation. *NTAG (20 Dec. 2013); HKIRC (9 Jan. 2014); FairWinds Partners (9 Jan. 2014); INTA Internet Committee (9 Jan. 2014); Hogan Lovells (10 Jan. 2014); Yahoo! (10 Jan. 2014); MarkMonitor (10 Jan. 2014); AFMI (29 Jan. 2014); Katten on behalf of Specific Brand Owners (31 Jan. 2014)*

Specification 13, together with two changes to it proposed by Valideus, will facilitate greater business flexibility for .BRANDs to reinforce their core message as innovative, secure online platforms absent of fraud or infringement and rich in consumer confidence. *Valideus (30 Dec. 2013); BBVA (8 Jan. 2014)*

Google encourages ICANN to adopt Specification 13 along with the additional changes to the Sunrise and Emergency Back-End Registry Operator provisions Google proposes in its comments. *Google (9 Jan. 2014); Google (31 Jan. 2014)*

ICANN's introduction of Specification 13 would bring mutually-beneficial contracting efficiency to ICANN and hundreds of applicants. *KPMG (6 Jan. 2014); BBC R&D (8 Jan. 2014); Reckitt Benckiser (8 Jan. 2014); BBVA (8 Jan. 2014); HSBC (9 Jan. 2013); Hogan Lovells (10 Jan. 2014); Yahoo! (10 Jan. 2014); BC (31 Jan. 2014)*

QVC supports Specification 13 because its proposed modifications to the gTLD Registry Agreement are necessary to protect both brands and the public trust. *QVC (7 Jan. 2014); Reckitt Benckiser (8 Jan. 2014); NCTA (31 Jan. 2014)*

- Modifications like those in Specification 13 must be adopted for two primary reasons:
 - (1) Such modifications will help to foster and maintain consumer trust in .BRAND TLDs because consumers will expect the content of a .BRAND site to emanate from or be affiliated with the particular brand; and
 - (2) .BRAND TLD applicants must be able to control the use of their brands in the new TLD space to preserve the source-identifying function of their trademarks. *QVC (7 Jan. 2014)*
- By adopting measures to address the needs of .BRAND applicants, ICANN will encourage future applications from brand companies in subsequent rounds, which could benefit from offering a separate type of application for TLDs that qualify as .BRAND TLDs at the outset. A one size-fits-all model will deter future applications from brand companies considering TLD applications as a way to grow their brands and promote consumer trust. *QVC (7 Jan. 2014); Microsoft (9 Jan. 2014); MarkMonitor (10 Jan. 2014)*

It is important that brand owners are able to operate their Registries safely and securely without damaging their brand or their consumers' interests. If brand owners are not able to do so it is possible that many of them will not sign the ICANN Registry Agreement resulting in delay or prevention of the launch of many new TLDs. It could also prevent other brand owners from applying for TLDs in future rounds. *Reckitt Benckiser (8 Jan. 2014)*

Specification 13 is a positive first step but does not resolve all issues relevant to .BRAND TLDs. ICANN should continue its efforts with the Brand Registry Group and the community to further improve the .BRAND TLD model. *QVC (7 Jan. 2014); Yahoo! (10 Jan. 2014)*

The IPC supports the principle of creating a new Specification 13 in the Registry Agreement to contractually reflect certain limited aspects of .BRAND registries to address some portion of the deficiencies in the new gTLD program. *IPC (9 Jan. 2014)*

- The new gTLD program currently lacks a sufficient framework for .BRAND registries to ensure their effective and stable operation, while reducing end user confusion in the DNS should such TLDs cease to maintain continued operations. *IPC (9 Jan. 2014)*
- These modifications are necessary to help advance the important intellectual property and consumer protection considerations that remain unresolved in the delegation of these gTLDs. While Specification 13 addresses some but not all of these pertinent issues, IPC encourages its swift adoption following assimilation of public input from this consultation. *IPC (9 Jan. 2014)*

MARQUES supports exempting .BRAND TLDs from ICANN's Code of Conduct insofar as .BRANDs would be presumed to be in the public interest. *MARQUES (31 Jan. 2014)*

ICANN should set conditions that allow brand registry operators the flexibility to launch innovative programs with as few restrictions as possible, while at the same time ensuring that .BRAND registry operators comply and operate with diligence and care to ensure the security and stability of the Internet. This is symbiotic. Brand registry operators will maintain the highest level of ethics, stability and security as it is in their best interest to be trusted and reliable to their target audiences. *Authentic Web (24 Dec. 2013)*

Analysis: ICANN Staff appreciates the comments submitted by various parties in support of the adoption and implementation of Specification 13. ICANN will consider the comments, including the supporting rationales for adoption of Specification 13, when analyzing whether to recommend the adoption of Specification 13 to the New gTLD Committee of the ICANN Board of Directors.

Opposition/General Comments

While the undersigned Registrars generally welcome the concept of a TLD operated by a brand owner for its own exclusive use, they cannot support several sections of the draft Specification 13-- in particular Section 3 and Section 5. *EuroDNS; GoDaddy; Web.com; Name.com; Key-Systems; Realtime Register; NetEarthOne; HostEurope Group; Astutium Ltd.; Nordreg AB; Blacknight (3 Feb. 2014)*

A mechanism is already in place for request and grant of an exemption/waiver from the Registry Operator Code of Conduct (Specification 9). The undersigned Registrars respectfully request that the BRG outline its specific concerns with the existing process, and articulate why it would fail to provide for the needs of their TLD. *EuroDNS; GoDaddy; Web.com; Name.com; Key-Systems; Realtime Register; NetEarthOne; HostEurope Group; Astutium Ltd.; Nordreg AB; Blacknight (3 Feb. 2014)*

If ICANN agrees to the proposed Specification 13 then ICANN should also adopt a similar proposition which follows GAC Advice to give preferential treatment to community-applicants with demonstrable support. ICANN should lower the threshold of 14 points to pass Community Priority Evaluation to community-based Applicants with demonstrable support. *.MUSIC (4 Feb. 2014)*

The practical difference of a .BRAND TLD is that names are not sold to the public. Names remain in the ownership of the brand entity, its subsidiaries or affiliates as described. In essence the registry operator and registrant are the same or the registrant is an entity owned or controlled by the registry operator who may use directly or be granted the rights to use .BRAND SLD names. *Authentic Web (24 Dec. 2013); KPMG (6 Jan. 2014); BBVA (8 Jan. 2014)*

Analysis: ICANN appreciates the comments by those that question the necessity and appropriateness of certain provisions of Specification 13. ICANN Staff notes that the Brand Registry Group submitted a paper outlining its rationale for the provisions of Specification 13, which was included in the materials posted for public comment. ICANN Staff encourages the Brand Registry Group to continue to work with the ICANN

community to further explain its rationale for the provisions of Specification 13.

Whether It is Appropriate To Classify Certain TLDs as “.Brand TLDs”

It is Appropriate to Classify Certain TLDs as “.BRAND TLDs.”

ALAC has no input on the details of Specification 13 but wishes to go on record as objecting to the creation of a new category of gTLD at this point, when earlier decisions were made to not have categories of TLDs supporting community, geographic, and other similar classes of gTLD. ALAC (31 Jan. 2014)

.BRAND TLD classification is appropriate. NTAG (20 Dec. 2013); KPMG (6 Jan. 2014); BBC R&D (8 Jan. 2014); Reckitt Benckiser (8 Jan. 2014); BBVA (8 Jan. 2014); HKIRC (9 Jan. 2014); HSBC (9 Jan. 2014); T. Onorato (9 Jan. 2014); Google (9 Jan. 2014); FairWinds Partners (9 Jan. 2014); INTA Internet Committee (9 Jan. 2014); IPC (9 Jan. 2014); Microsoft (9 Jan. 2014); Hogan Lovells (10 Jan. 2014); Yahoo! (10 Jan. 2014); Key-Systems (10 Jan. 2014); MarkMonitor (10 Jan. 2014); ECTA (16 Jan. 2014); AFMI (29 Jan. 2014); BC (31 Jan. 2014); Katten on behalf of Specific Brand Owners (31 Jan. 2014)

- .BRAND TLDs accounted for nearly 1/3 of applications; they present a unique model with the potential to yield significant benefits in terms of consumer trust and overall experience of Internet users. NTAG (20 Dec. 2013); SLAM Strategy (30 Dec. 2013); KPMG (6 Jan. 2014); BBC R&D (8 Jan. 2014); BBVA (8 Jan. 2014); HKIRC (9 Jan. 2014); HSBC (9 Jan. 2014); Google (9 Jan. 2014) HKIRC (9 Jan. 2014); FairWinds Partners (9 Jan. 2014); Microsoft (9 Jan. 2014); Hogan Lovells (10 Jan. 2014); AFMI (29 Jan. 2014); Katten on behalf of Specific Brand Owners (31 Jan. 2014)
- Specification 13 takes into account many of the unique needs of .BRAND registries and signifies ICANN’s recognition of and support for the diverse array of applications ushered in by the new gTLD program. NTAG (20 Dec. 2013); BBC R&D (8 Jan. 2014); HKIRC (9 Jan. 2014); HSBC (9 Jan. 2014); T. Onorato (9 Jan. 2014); Google (9 Jan. 2014); FairWinds Partners (9 Jan. 2014); Microsoft (9 Jan. 2014); Hogan Lovells (10 Jan. 2014); Yahoo! (10 Jan. 2014); MarkMonitor (10 Jan. 2014); AFMI (29 Jan. 2014); BC (31 Jan. 2014); Katten on behalf of Specific Brand Owners (31 Jan. 2014)

.BRAND TLD classification is not only appropriate but is essential to the success and continuing evolution of the domain name space and a fair adjustment for brands who have invested millions of dollars building brand equity in their respective markets. Authentic Web (24 Dec. 2013); SLAM Strategy (30 Dec. 2013)

- Brands will have the ability to use their marketing power, reach and incentives to innovate in the name space and create new and better experiences. Authentic Web (24 Dec. 2013); SLAM Strategy (30 Dec. 2013); T. Onorato (9 Jan. 2014); FairWinds Partners (9 Jan. 2014); IPC (9 Jan. 2014); AFMI (29 Jan. 2014); BC (31 Jan. 2014)
- .BRAND TLDs offer brands new capabilities such as control, authenticity and security and will foster technological advancement. Authentic Web (24 Dec. 2013); SLAM Strategy (30 Dec. 2013); IPC (9 Jan. 2014)
- ICANN has an obligation to allow .BRAND TLDs since it is ICANN’s expansion program that is adding significant costs, risks and management challenges in doing business. .BRANDs will be the best defense for brands against nefarious players who seek to profit by posing as brand actors to dupe the public. Authentic Web (24 Dec. 2013)

- .BRAND TLDs will generate trust among users, thus serving the public interest. *Authentic Web (24 Dec. 2013); SLAM Strategy (30 Dec. 2013); FairWinds Partners (9 Jan. 2014); IPC (9 Jan. 2014); AFMI (29 Jan. 2014)*

The domain name industry needs innovation to remain relevant and survive into the foreseeable future. Without the new class of .BRAND TLDs, such innovations as the ability for brands to be able to offer Personalized Domain Names (PDNs) would be impossible. *SLAM Strategy (30 Dec. 2013)*

- PDNs enable brands to connect with their customers in new and exciting ways while still maintaining control so that Internet abuse can stop promptly. *SLAM Strategy (30 Dec. 2013)*
- PDNs are the fastest and most effective way to educate the public about the value of the entire domain name industry due to the existing trusted relationships that brands have with their customers, thus helping to secure its future. ICANN has the ability to implement positive social and commercial change through the delegation of .BRAND TLDs. *SLAM Strategy (30 Dec. 2013)*
- The new specification will make it clear that it is possible for companies such as SLAM Strategy to continue to develop specific .brand services that will be required to effectively manage PDNs for brands without fear that we will be against the Registry Agreement. *SLAM Strategy (30 Dec. 2013)*
- Brand applicants will drive technological, business model and business process improvements and innovations utilizing the new capabilities (e.g. security, control, and authenticity) that operating a gTLD registry affords. Brands may use gTLD registry capabilities to address key business concerns including customer revenue growth, operating effectiveness, transformation, technology change, data analytics, and IT management (see illustrative chart in KPMG comments text). *KPMG (6 Jan. 2014); BBVA (8 Jan. 2014)*

While a baseline contract reflects certain commonalities to all TLDs, specific targeted adjustments as found in proposed Specification 13 reflect the reality that some types of TLDs propose to apply different operational norms. The standard ICANN Registry Agreement already reflects the need for specific adjustments for certain types of TLDs (e.g. changes carved out for “intergovernmental organizations or governmental entities”). Not only is it appropriate to classify certain TLDs as “.BRANDs” where they correspond to a “non-TLD trademark,” but failing to recognize the underlying trademark reputation and goodwill risks delaying .BRAND adoption. *Valideus (30 Dec. 2013); BBVA (8 Jan. 2014)*

If a separate class were to be created, brand owners and other single-registrant TLDs can easily be afforded additional accommodations to avoid unnecessary costs and effort (in addition to the ones included in the proposal). *DNA (9 Jan. 2014)*

- If a brand category is being created, other unnecessary trappings of general-use TLDs that are costly for registries and for ICANN to enforce (e.g. EPP SLAs, Sunrise, Whois reminder notices) could be dispatched. *DNA (9 Jan. 2014)*
- In addition, UDRP transfers should be eliminated, as a UDRP transfer would be an automatic violation of the brand requirement. *DNA (9 Jan. 2014)*

Trademark Law

Trademarks are not gTLDs. Trademark rights have no similarity to the rights conferred on using ICANN’s

new top level domain names. Trademark rights are conferred by States to individuals for the sole purpose of protecting the bona fide use of a mark in a specific category of products or services. There is no system of brands in the world to grant general rights on the use of a sign or name. Requested trademark applications have been ordered for specific products and services demonstrating recognition of the limitation of the company's rights. In the national nomenclature of goods and services (in accordance with the Treaty of Nice) there are 45 classes of goods and services. *Governments of Chile and Argentina (9 Jan. 2014)*

Any decision by ICANN on the .BRAND gTLD issue must be categorically without prejudice to determinations by national trademark offices and courts with respect to evaluation of domain names as trademarks (whether at the top, second, or other level). *IPC (9 Jan. 2014)*

GAC Principles.

Registry agreements and rules for Registry Operators should fully respect what is established by the "GAC Principles regarding new TLDs" including:

- To adopt procedures for blocking, at no cost and on demand of governments, public authorities or IGOs, names with national or geographic significance; and
- To ensure procedures to allow governments, public authorities and IGOs to challenge abuses of names with national or geographic significance at the second level of a new gTLD. *Governments of Chile and Argentina (9 Jan. 2014)*

In addition, the 2011 ICANN Board-GAC Consultations about Geographic Names addressed this issue when they established that: All applicants are required to describe in the application their proposed measures for ensuring the protection of geographic names at the second and other levels in their TLD. *Governments of Chile and Argentina (9 Jan. 2014)*

Analysis: While the public comments generally supported the adoption of Specification 13, ICANN Staff acknowledges that members of the ICANN community submitted comments in opposition to the adoption of Specification 13 and/or certain of its provisions, including the classification of certain TLDs as Brand TLDs. ICANN will consider these supportive and opposing comments when analyzing whether to recommend the adoption of Specification 13 to the New gTLD Committee of the ICANN Board of Directors.

Whether the Definition of ".Brand TLD" Is Sufficiently Narrow to Capture Only What Is Commonly Recognized as a Corporate Brand

The definition is sufficiently narrow. *Authentic Web (24 Dec. 2013); SLAM Strategy (30 Dec. 2013); Valideus (30 Dec. 2013); KPMG (6 Jan. 2014); Reckitt Benckiser (8 Jan. 2014); BBVA (8 Jan. 2014); HSBC (9 Jan. 2014); FairWinds Partners (9 Jan. 2014); Microsoft (9 Jan. 2014); Hogan Lovells (10 Jan. 2014); Yahoo! (10 Jan. 2014); MarkMonitor (10 Jan. 2014); NCTA (31 Jan. 2014); Katten on behalf of Specific Brand Owners (31 Jan. 2014)*

- Brands will not be selling their domains and they will be able to allow third parties to assist them with developing and innovating in their space without the same restrictions requirements of the open TLD. As long as brands have the ability to commercialize their interests without negatively

impacting on the greater domain industry the definition is sufficiently narrow. *SLAM Strategy (30 Dec. 2013)*

- ICANN should not seek to foresee all possible circumstances where a narrower definition may be appropriate, but rather should have the ability to strengthen the definition should circumstances materialize that may warrant such adjustments. *Authentic Web (24 Dec. 2013)*
- ICANN should take a holistic, considered approach in assessing whether a TLD is a bona fide .BRAND registry initially as well as on an ongoing basis. *Valideus (30 Dec. 2013); KPMG (6 Jan. 2014); BBVA (8 Jan. 2014); HSBC (9 Jan. 2014); MarkMonitor (10 Jan. 2014)*
 - Simply having a trademark in the Trademark Clearinghouse may not suffice; likewise, however, it should not be a prerequisite. *Valideus (30 Dec. 2013); BBVA (8 Jan. 2014)*
 - E.g. Evidence of third party brand rankings and evaluations. The holistic approach will mitigate against any third party actors that may for some unknown reason seek to take advantage of securing “.BRAND gTLD” status with ICANN but who may operate outside such definition. *KPMG (6 Jan. 2014); BBVA (8 Jan. 2014); HSBC (9 Jan. 2014)*
 - The definition is so narrow that ICANN should be mindful of the possibility that some non-generic TLDs may not qualify as .BRAND TLDs but could still be used by applicants in a branded sense. When those situations arise, ICANN should take a holistic approach in determining whether an application constitutes a .BRAND TLD and not foreclose applicants’ ability to seek exemptions to Specification 9 of the Code of Conduct for applications that are not “generic” TLDs. *Microsoft (9 Jan. 2014); Google (31 Jan. 2014)*
 - ICANN should specifically retain discretion to consider evidence other than just a trademark registration in order to conclude that a particular TLD should be considered a .BRAND. *NCTA (31 Jan. 2014)*
- The baseline requirements must be sufficient to permit brand owners who wish to utilize .BRAND gTLDs, yet dissuade third parties who may seek to game or abuse the process by registering a trademark solely to be able to apply for a .BRAND TLD. Nevertheless, to ensure fairness, applicants who do not meet the baseline criteria should be able to make their case to ICANN as a .BRAND for the purposes of applying Specification 13, while ICANN retains the discretion (or can delegate the discretion) to make any final determinations. *IPC (9 Jan. 2014); Google (31 Jan. 2014)*

Because the definition of “.BRAND” is tied to objective, verifiable criteria correlated to the Trademark Clearinghouse, it reflects a rational and implementable standard. *T. Onorato (9 Jan. 2014)*

The definition of “.BRAND” should include one further requirement: “g. is not in itself a generic term and intended to be used for purposes defined by said generic term.” The rationale for this addition is the potential for abuse of this new category due to possible existence of trademarks registered in one language that would not be registerable in another due to those strings constituting a generic term in the other language. If such TLDs would then be used in the sense of this generic term, this would create the ability to monopolize said generic term. *Key-Systems (10 Jan. 2014)*

Analysis: ICANN Staff will consider these comments when considering revisions to Specification 13. In addition, if Specification 13 is adopted by ICANN, it is anticipated that any decision regarding a TLDs’ qualification as a .Brand TLD would be made prior to execution of the Registry Agreement for the TLD. In

addition, ICANN currently intends to post its preliminary approval determination on its website. ICANN's analysis would be holistic in nature and guided by the definitions included in the draft Specification 13.

Whether There May Be Unintended Consequences Associated With the Implementation of Draft Specification 13

The registry agreement should provide ICANN a mechanism to address negative unintended or unforeseen behaviors where those behaviors are not in the spirit of the definitions and/or where actions of a proposed applicant cause harm in some manner to the security and stability of the Internet. *Authentic Web (24 Dec. 2013)*

The mechanism should not seek to foresee all possible unintended consequence scenarios; that would be a fruitless effort that would delay and dissuade adoption of and innovation in the name space. *Authentic Web (24 Dec. 2013)*

- The mechanism should provide a framework to address situations where actors seek to take advantage of a definition to pursue a closed .BRAND TLD when they are in fact not an established brand. *Authentic Web (24 Dec. 2013)*
- That said, there will be circumstances where a new brand is established and should well be awarded a registry. The mechanism should have the flexibility to rule consistent with the charter and mandate of ICANN as steward of the name space and provide a level playing field for new entrants. *Authentic Web (24 Dec. 2013)*

The multistakeholder, bottom up principle needs to remain in place to ensure that the public interest always outweighs commercial interest. If ICANN can create such an environment, then any unintended consequences in the future can be overcome. *SLAM Strategy (30 Dec. 2013)*

- An unintended consequence could possibly be brands positioning themselves to block competitors of both similar products and services and similar or same brand names. ICANN needs to ensure that the process allows for all to compete in the space and not just those early adopters. This may mean allowing confusingly similar TLDs. Since brands are not selling domain names this becomes somewhat less of an issue. *SLAM Strategy (30 Dec. 2013)*
- Although it is impossible to know exactly how brands will use their .BRAND TLDs, ICANN needs to allow significant room to foster innovation in conjunction with any third parties assisting the brands. At the same time ICANN needs to retain the ability to override any decisions made if it is established that the outcomes are not in the best interests of the wider community. *SLAM Strategy (30 Dec. 2013)*

Insofar as it is akin to proving a negative, it is impossible to directly answer this question. Equally, though, a consequence of not implementing Specification 13 may be delayed uptake of .BRAND TLDs. *Valideus (30 Dec. 2013); BBVA (8 Jan. 2014)*

It is impossible to forecast what "unintended" consequences may arise as they are by their very nature unforeseen. *KPMG (6 Jan. 2014); BBVA (8 Jan. 2014)*

While it is impossible to know for sure the full extent of any “unintended consequences” that may arise, Specification 13 in its current form establishes a useful framework for handling what are likely to be the most common shared concerns, characteristics and needs of .BRANDs. Its acceptance and implementation will efficiently eliminate the need for ICANN Staff to negotiate these same critical issues over and over again. *Yahoo! (10 Jan. 2014)*

ICANN should consider any possible impact of not implementing Specification 13. Adoption of a clear policy and contractual framework by ICANN recognizing a distinct .BRAND gTLD status provides a reasonable and predictive framework for corporate brands that will encourage faster adoption and implementation, investment in innovation, marketing and promotion. *KPMG (6 Jan. 2014); BBVA (8 Jan. 2014)*

FairWinds Partners does not anticipate any negative consequences will follow from implementing Specification 13, but believes that there could be significant negative effects of not proceeding with implementation of Specification 13. *FairWinds Partners (9 Jan. 2014)*

At the moment Reckitt Benckiser does not foresee any unintended consequences. *Reckitt Benckiser (8 Jan. 2014)*

The .BRAND definition is narrow and the language carefully crafted to avoid unintended consequences. It is difficult to predict all unintended consequences, good or bad, but this should not detract from the clear benefits and positive known consequences of adopting Specification 13. *HSBC (9 Jan. 2014); Hogan Lovells (10 Jan. 2014)*

As with any contract, the Registry Agreement as a whole has an element of fluidity built in to accommodate for unintended or unforeseen consequences, and MarkMonitor considers those to be appropriate to address any future issues. *MarkMonitor (10 Jan. 2014)*

There are no unintended consequences associated with the implementation of Specification 13. The definition of a .BRAND TLD is sufficiently narrow to keep out non-bona fide trademark owners, while also not affecting the already existing sufficient compliance measures available to ICANN if necessary. *Katten on behalf of Specific Brand Owners (31 Jan. 2014)*

The proposed Specification 13 creates unintended consequences. It harms community-based applicants (i) with non-exclusive access, community-based applications, (ii) with bona-fide trademarks in the class of domain-related activities, and brand-name applicants (iii) who were Objectors to exclusive- access applications in the Legal Rights Objection process with WIPO. Such cases include those of .MUSIC regarding its bona fide trademark(s) “.MUSIC” and “.DOTMUSIC” in nearly 30 countries and its globally recognized brand use in commerce in the sectors relating to domain names and music. *.MUSIC (4 Feb. 2014)*

A brand name which has a descriptive trademark should not be used by brand owners as an exclusive-access registry to block community members with activities under the descriptive sense of a trademark.

E.g., the brand Apple (which applied for .APPLE) should not be allowed to block apple-related entities from registering a domain in .APPLE relating to apple-services. In this case, Apple should only be allowed to block second-level domains relating to its trademark's class of goods and services. It is noted that ICANN has already implemented a material change in the Applicant Guidebook to remove exclusive-access language in its new Registry Agreement. *,MUSIC (4 Feb. 2014)*

Analysis: When proposing any modifications to the form Registry Agreement, it is important to analyze whether these modifications will have unintended consequences. ICANN Staff appreciates that it is difficult to accurately foresee and project whether any unintended consequences may arise in the future. ICANN Staff will consider these comments when considering revisions to Specification 13, in particular whether revisions to the definitions included in Specification 13 are necessary and whether it is appropriate for ICANN to implement a mechanism that will provide ICANN flexibility to modify the requirements and definitions of Specification 13 over time.

Whether It is Appropriate To Permit a Registry Operator for a .Brand TLD to Limit Its Registrar Use to One or More Preferred ICANN Accredited Registrar(s)

There is no basis for imposition of the open market access provision on .BRAND TLDs. .BRAND SLDs are not being sold to the public; therefore there is no market for the .BRAND TLD other than for the brand's own ownership. In the .BRAND world, the brand is investing in and operating its own asset. How that brand chooses to select vendors and partners to build the new asset class should remain at the sole discretion of the brand registry operator. *Authentic Web (24 Dec. 2013); Reckitt Benckiser (8 Jan. 2014); HSBC (9 Jan. 2014); T. Onorato (9 Jan. 2014); FairWinds Partners (9 Jan. 2014); Microsoft (9 Jan. 2014); Hogan Lovells (10 Jan. 2014); Yahoo! (10 Jan. 2014); MarkMonitor (10 Jan. 2014); ECTA (16 Jan. 2014); MARQUES (31 Jan. 2014); NCTA (31 Jan. 2014); Katten on behalf of Specific Brand Owners (31 Jan. 2014)*

Competition between services providers (Registrars) is unaffected as transfer to another accredited Registrar is not prevented; therefore, other Registrars are still free to compete to acquire the Registry Operators. *Reckitt Benckiser (8 Jan. 2014)*

It is appropriate to allow .BRANDs to register domain names through select trusted registrar partners (so long as a registrar is even required). Note litigation (cited in Valideus Annex to Comments) in which ICANN-accredited registrars have been called to answer for trademark-infringing conduct involving domain names. *Valideus (30 Dec. 2013); KPMG (6 Jan. 2014); BBVA (8 Jan. 2014); IPC (9 Jan. 2014).*

The non-discrimination clause does not provide additional competitive benefits for .BRAND TLDs; however, requiring all registrars to have access to a .BRAND TLD will cause security concerns for brand owners that would have to open their TLDs to unknown and untrusted companies. By permitting .BRAND TLDs to use trusted registrars, ICANN is allowing .BRAND Registry Operators to better secure their online spaces to Internet users that will be visiting their websites. Thus there are important benefits to allowing a .BRAND Registry Operator to use its trusted registrar(s), and no discernible costs to anyone in the Internet community. *Katten on behalf of Specific Brand Owners (31 Jan. 2014)*

Limiting registrar use to a carefully selected, trusted ICANN-accredited registrar, rather than providing open access to all ICANN-accredited registrars, will address legitimate concerns on competitor access and insight to a .BRAND gTLD via a third party ICANN-accredited registrar acting on behalf of any competitor organization. *KPMG (6 Jan. 2014); BBVA (8 Jan. 2014)*

Closed brand gTLDs will be motivated to operate to the highest standards and public interest, as any such deviation could have a direct impact on customer and public perceptions of the corporate brand, which in turn would have a detrimental financial impact. .BRAND gTLDs should be free to carefully select a trusted registrar who will operate not only to contractually defined SLAs, but also standards of conduct. See text of KPMG comments for illustrative chart summarizing differences in selecting a registrar, depending on type of gTLD registry (Closed, Restricted Open, Open). *KPMG (6 Jan. 2014); BVVA (8 Jan. 2014)*

It is not clear why single-registrant TLDs need an exemption from the requirement to treat registrars equally. *DNA (9 Jan. 2014)*

- Any registrant can choose any registrar it wants. So a single-registrant TLD can use any registrar it chooses and still be in compliance with the Code of Conduct. This supposition should be made clear by ICANN. *DNA (9 Jan. 2014)*
- A slightly different point: qualification as a brand might simply trigger an exemption from the code of conduct. *DNA (9 Jan. 2014)*

Key-Systems does not agree that there is a need to permit a Registry Operator for a .BRAND TLD to limit its registrar use to one or more preferred accredited registrar(s), as no conclusive argument demonstrating a need for this permission besides cost savings has been proposed. *Key-Systems (10 Jan. 2014)*

- The Registry Operator essentially has the ability to achieve this very result without any special permission by tailoring its eligibility requirements so that most registrars would find it unattractive to pursue or maintain an accreditation. *Key-Systems (10 Jan. 2014)*
- As registrations in .BRAND TLDs would be limited to a very exclusive circle of potential registrants, those registrants can choose the preferred registrar(s) for registrations, which would result in no registrations amongst those registrars that are not preferred, thereby making the accreditation economically unviable. *Key-Systems (10 Jan. 2014)*

Several registrars are concerned with the proposed language in Specification 13 as written because it could reintroduce the concerns of equal registrar access and undermine the registry-registrar model for domain names. This could give rise to TLDs where the registry, registrar and registrant (or a subset of those roles) are the same entity, and the beneficial user of the domain name lies with another party. *EuroDNS; GoDaddy; Web.com; Name.com; Key-Systems; Realtime Register; NetEarthOne; HostEurope Group; Astutium Ltd.; Nordreg AB; Blacknight (3 Feb. 2014)*

Analysis: When working with the Brand Registry Group to prepare draft Specification 13, the Brand Registry Group and its membership maintained a consistent and strong belief that providing .Brand TLD registry operators with the flexibility to appoint a single or limited number of authorized registrars for the TLD was important for several reasons, including security for the TLD, protection of the "brand" associated with the

TLD and operational efficiency. The Brand Registry Group also believed that the ICANN registrar community would not likely be concerned with this flexibility because of the perceived limited economic benefit associated with working with a closed TLD.

While many commentators expressed similar supportive views, ICANN Staff notes that several members of the ICANN registrar community have opposed the adoption of the provisions of Specification 13 that provided this flexibility. ICANN will carefully consider the comments submitted by these registrars. ICANN Staff is also aware of the existence of GNSO policy on this point, and will consider whether it is appropriate to request GNSO consideration of this matter.

Whether a Two Year “Cooling Off” Period Prior to Re-Delegation of the .Brand TLD Upon Expiration or Termination of the Registry Agreement Is Appropriate (Subject to the Limitations Provided in the Draft Specification)

While the two year cooling off period may be appropriate, it is unclear what its implications might be. Similar to the unintended consequences question, the future is unknown and the correct policy approaches are not entirely definable at this time. ICANN may be better served to establish a mechanism that gives ICANN the ability to address future circumstances when those circumstances become more apparent.
Authentic Web (24 Dec. 2013)

Given possible coexistence between a .BRAND and another .BRAND or even a keyword, a two year “cooling off” period to reduce the chance of unintended collision or other consequences is a reasonable compromise to allow winding down of operations and a corresponding shift of consumer expectations.
Valideus (30 Dec. 2013); KPMG (6 Jan. 2014); BBVA (8 Jan. 2014); HSBC (9 Jan. 2014); Hogan Lovells (10 Jan. 2014); Yahoo! (10 Jan. 2014); Key-Systems (10 Jan. 2014)

The proposed language acknowledges the prospect of confusion posed by the transition of exclusive use TLDs and creates a two-year period in which the .BRAND registry operator must consent to the transition of the TLD to another registry. Google thinks this is a reasonable compromise that mitigates the risk of consumer confusion while acknowledging ICANN’s desire to continue operation of TLDs where appropriate.
Google (9 Jan. 2014); Microsoft (9 Jan. 2014); ECTA (16 Jan. 2014); BC (31 Jan. 2014); MARQUES (31 Jan. 2014); Katten on behalf of Specific Brand Owners (31 Jan. 2014)

The two-year cooling off period is appropriate to ensure that consumer confusion does not result from too quickly transferring the TLD from one brand to another. International trademark law allows for the coexistence of brands where there is no likelihood of consumer confusion. Some may consider it inappropriate for .BRAND TLDs to maintain a monopoly over a term *in perpetuity*, where that TLD is no longer in use and where there is a legitimate coexistence. The agreement appropriately considers and accommodates the scope of existing trademark law, and does not expand it.
MarkMonitor (10 Jan. 2014)

In those cases where confusion could occur through re-delegation, ICANN should clarify whether prior TLD owners would be allowed to bring Legal Rights Objections separate and apart from the mandatory dispute resolution process, or whether these processes would be combined.
Microsoft (9 Jan. 2014)

The proposed two year “cooling off” period upon termination of the Registry Agreement is appropriate and logical for .BRAND gTLDs. It will limit consumer confusion while protecting the rights of third parties that might also have interests in the string and wish to operate the corresponding gTLD downstream. *FairWinds Partners (9 Jan. 2014)*

Reckitt Benckiser would support a permanent bar on re-delegation as it seems unnecessary that a TLD for a “closed” Registry would need to be re-delegated at all. However, Reckitt Benckiser is prepared to compromise for the moment on this point on the basis that this matter is reviewed again in the future. *Reckitt Benckiser (8 Jan. 2014)*

The wind down period should take place over a period lasting a minimum of three years. This is more consistent with most jurisdictions’ laws concerning the abandonment of trademarks. Re-delegation of a well known .BRAND gTLD can cause mistake, confusion or even intentional harm to the public. The three-year period will provide .BRAND registries with a means to rationally exit from online registry activities without losing control of their brand and existing trademark rights, while minimizing any consumer confusion in the process. *IPC (9 Jan. 2014)*

Wilmar believes that any redelegation of a .BRAND TLD after two years following the termination of the Registry Agreement should not be at ICANN’s discretion, but needs to take place in consultation with the initial applicant/brand owner. *Wilmar (9 Jan. 2014)*

The language of Section 4.5 is at best contradictory. It should be made clear that, except in the case of redelegation that is necessary to protect the public interest, redelegation by any method is not permitted during the two years following the Expiration Date. *IEEE Global (9 Jan. 2014)*

- The proposed specification also continues to give ICANN too much discretion to redelegate a TLD where ICANN determines it must do so to protect the public interest. While IEEE Global welcomes the addition of a method for the Registry Operator to dispute such determinations, the continued ability of ICANN to make the initial determination without clear guidelines and with significant discretion creates uncertainty. *IEEE Global (9 Jan. 2014)*
- There should be a higher standard that ICANN should have to meet. IEEE Global recommends that for qualifying .BRAND TLDs redelegation in the public interest be allowed only when redelegation would “prevent significant harm to the public interest that is unavoidable in the absence of redelegation.” *IEEE Global (9 Jan. 2014)*

The proposed re-draft of the Transition clause offers some additional process but really not much additional protection for BRAND TLDs with respect to transfer of the TLD. More definitive or objective criteria might provide certainty for the brand owner that the TLD will not be transferred for a period of time. *DNA (9 Jan. 2014)*

Regarding Section 3, while undersigned Registrars do not object to the proposed language and recognize that it may not be appropriate for some TLDs to be re-delegated by ICANN following a termination of the registry agreement, the undersigned Registrars propose that the TLD operator should be obligated to take

steps to notify affected third parties, such as operating system vendors, browser developers, SSL Certificate Authorities, major ISPs, and other relevant industries or organizations. *EuroDNS; GoDaddy; Web.com; Name.com; Key-Systems; Realtime Register; NetEarthOne; HostEurope Group; Astutum Ltd.; Nordreg AB; Blacknight (3 Feb. 2014)*

Analysis: ICANN Staff appreciates that the public comments generally supported a waiting period prior to the re-delegation of a .Brand TLD. Some comments argued for further limitations on ICANN's ability to re-delegate the TLD following expiration or termination of the .Brand TLD Registry Agreement. When considering revisions to Specification 13, it is unlikely that ICANN Staff would include further limitations on its ability to re-delegate a .Brand TLD in the future.

Proposed Changes to Specification 13

Defer Sunrise Requirement at Launch of .BRAND TLD.

NTAG proposes a change to Specification 13 to allow registry operators to make use of their new TLD sooner and improve the protections available to trademark holders through the Sunrise Period for .BRAND TLDs. *NTAG (20 Dec. 2013); HKIRC (9 Jan. 2014); Google (9 Jan. 2014); IEEE Global (9 Jan. 2014); Hogan Lovells (10 Jan. 2014); BC (31 Jan. 214); NCTA (31 Jan. 2014); Katten on behalf of Specific Brand Owners (31 Jan. 2014)*

- ICANN should defer the Sunrise requirement to such time as when a .BRAND applicant may decide to open up its TLD to offer domains to unaffiliated third parties--at which point the terms of Specification 13 would no longer apply. In the meantime, the Claims Period would still provide trademark owners with protection during the period when the TLD is exclusively used by the .BRAND registrant by providing notice to trademark owners if the registrant registers domains in the Trademark Clearinghouse. *NTAG (20 Dec. 2013); HKIRC (9 Jan. 2014); Google (9 Jan. 2014); Hogan Lovells (10 Jan. 2014); BC (31 Jan. 2014); NCTA (31 Jan. 2014); Katten on behalf of Specific Brand Owners (31 Jan. 2014)*
- Under current rules .BRAND registries must hold a Sunrise Period in which the operator of the .BRAND registry and its affiliated parties will be the sole registrants and will only be able to register trademarked domains in respective gTLDs. Presently there is no Sunrise requirement if the .BRAND TLD is later opened to unaffiliated third party registrations. NTAG's recommendation provides a remedy for this: by making a small adjustment to the implementation of the Sunrise requirement for .BRAND TLDs, ICANN will maximize the protection of third party rights holders by offering a Sunrise when it is actually meaningful, while simultaneously eliminating unnecessary procedural delay in the launch of new TLDs. *NTAG (20 Dec. 2013); HKIRC (9 Jan. 2014); IEEE Global (9 Jan. 2014); Hogan Lovells (10 Jan. 2014); BC (31 Jan. 2014); NCTA (31 Jan. 2014); Katten on behalf of Specific Brand Owners (31 Jan. 2014)*

With respect to the proposed new reference on Sunrise, while the BRG is supportive of the comments, the BRG notes this is outside the current articles of Specification 13. *BRG (31 Jan. 2014)*

Analysis: The implementation of Sunrise Periods is an important rights protection mechanism. Equally important is implementation of a Sunrise Period at a time that is most beneficial to protecting the legal

rights of third parties. ICANN will consider delaying the Sunrise requirements, subject to appropriate conditions, for .Brand TLDs until such time as the .Brand TLD no longer qualifies as a .Brand TLD.

Relation to Trademark Clearinghouse--Section 5.1(i) a.

Since the future monopoly status and duration of the Deloitte-IBM Trademark Clearinghouse is unclear, Valideus proposes the following change at Section 5.1(i)a: “is initially registered with the Trademark Clearinghouse or any successor/alternative ICANN-accredited trademark database, if such mark meets the relevant eligibility requirements ~~to be registered with the Trademark Clearinghouse.~~” It is worth noting that some .BRAND applicants may have preferred to avoid the Trademark Clearinghouse--in particular for scores of costly defensive registrations--altogether. *Valideus (30 Dec. 2013); BBVA (8 Jan. 2014); HSBC (9 Jan. 2014); BRG (31 Jan. 2014)*

HKIRC would like to clarify and suggest that BRAND TLD Registry Operators are only required to have their trademarks registered at the Trademark Clearinghouse at the time of signing of the Registry Agreement and that Registry Operators are not required to maintain their trademark registrations at the Trademark Clearinghouse after the signing of the Registry Agreement. Registry Operators should not be required to maintain the Trademark Clearinghouse registration for more than one year and should have the freedom to deliberate if the Trademark Clearinghouse registration is necessary and valuable to their right protection after the signing of the Registry Agreement and the expiry of the registration. *HKIRC (9 Jan. 2014)*

Section 5.1(i) a is unnecessary: if all other elements of the proposed criteria can be established, then all nationally registered trademarks should qualify (and not only those deposited in the Trademark Clearinghouse). ICANN also should ensure that applicants have a clear process to request consideration for designation as a “.BRAND gTLD.” *INTA Internet Committee (9 Jan. 2014); ECTA (16 Jan. 2014)*

Wilmar does not see a reason for the requirement to use the Trademark Clearinghouse in its capacity as a registry. Since according to Section 5.1(ii) of the draft Specification 13 any and all domain names in the .BRAND gTLD must be registered in the name of Registry Operator, its Affiliates or Trademark Licensees and that the corresponding DNS records are to be controlled, the requirement to use the Trademark Clearinghouse in start-up rights protection mechanisms is superfluous and should be abandoned. *Wilmar (9 Jan. 2014); SDS (21 Jan. 2014)*

- Wilmar does not see the added value of the trademark being registered in the Trademark Clearinghouse. It is not the Trademark Clearinghouse’s mission to take part in determining whether or not an applicant is operating a .BRAND; its task is to support the rights protection mechanisms in second level registrations--no more, no less. *Wilmar (9 Jan. 2014); SDS (21 Jan. 2014)*
- The current wording of Section 5.1 implies that .BRAND applicants must keep their corresponding trademarks registered with the Trademark Clearinghouse throughout the entire term of the Registry Agreement in order to be eligible for invoking the provisions of Specification 13; this is an overly onerous requirement. *Wilmar (9 Jan. 2014)*
- Nor does Wilmar see the value of having its trademarks registered in the Trademark Clearinghouse and providing ICANN with an accurate and complete copy of the trademark registrations. Wilmar agrees with the latter but not the former. *Wilmar (9 Jan. 2014); SDS (21 Jan. 2014)*

- In any case, part of the wording of Section 5.1 is superfluous since a trademark can only be registered in the Trademark Clearinghouse if it meets the eligibility requirements that have been defined for it. Therefore Section 5.1 should be reworded as follows: “a. meets the eligibility requirements to be registered with the Trademark Clearinghouse.” The obligation to actually be registered or remain registered with the Trademark Clearinghouse should be omitted. *Wilmar (9 Jan. 2014)*

Whether or not registration with the Trademark Clearinghouse remains one of the elements required for satisfaction of Specification 13, INTA Internet Committee believes that, to avoid any inference that Specification 13 is the only way to qualify as a .BRAND TLD, ICANN should expressly acknowledge that it retains the discretion to consider other evidence in deciding whether a gTLD qualifies as a .BRAND TLD and is therefore entitled to seek application of Specification 13. There are various reasons why a Registry Operator may have filed for a new gTLD string for which it has not obtained a national registration (and therefore cannot register with the Trademark Clearinghouse) or made the decision not to record its registration with the Trademark Clearinghouse, notwithstanding that the applied-for TLD string is entitled to trademark protection under applicable law. *INTA Internet Committee (31 Jan. 2014)*

Analysis: The Trademark Clearinghouse recordation requirement will facilitate ICANN’s review of applications and provide an external source of validation of such mark. ICANN will consider limitations on the duration of the required recordation, including limiting this recordation requirement to one year.

Emergency Back-End Registry Operator--Section 2.13 Modification. Section 2.13 should be modified to make it clear that if a .BRAND TLD operator chooses to terminate the Registry Agreement, ICANN is not permitted to appoint an Emergency Back-End Registry Operator. In the event of a failure of a .BRAND TLD, brand owners should be able to decide whether to continue operating the TLD or to instead terminate the agreement pursuant to Section 4.4(b) which allows termination with 180 days notice. *Google (9 Jan. 2014)*

Analysis: ICANN Staff will consider these comments when considering revisions to Specification 13, but it is unlikely, at this time, that ICANN would modify the provisions relating to an Emergency Back-End Registry Operator.

Remediation Period to Re-Qualify as .BRAND. In the event that ICANN determines that a gTLD no longer qualifies as a .BRAND, FairWinds Partners requests that the Registry Operator be given 90 days from the receipt of notice by ICANN to fully meet the requirements of a .BRAND gTLD provided that, within 30 days, it indicates its intent to remain a .BRAND gTLD and that it is working in good faith to undertake any necessary remedial measures. This change would account for the fact that certain remediation initiatives may take more than 30 days to be fully implemented by the Registry Operator. *FairWinds Partners (9 Jan. 2014); AFMI (29 Jan. 2014)*

Analysis: The provisions of Specification 13 already contain dispute resolution mechanics and an opportunity for a Registry Operator to remedy any matter that may give rise to disqualification of the .Brand TLD.

Reflecting Corporate Structures--Affiliates.

In the spirit of a change ICANN made to the Registry Agreement section 7.5 to streamline a change in control between existing TLD operators, Valideus proposes the following change to section 5.1(i) f: “is used by Registry Operator or its Affiliate in the conduct of one or more of its businesses that are unrelated to the provision of TLD Registry Services.” This reflects that .BRAND applicants may not themselves own the reputation and goodwill in the .BRAND-corresponding trademark, but would necessarily fall within the same corporate umbrella as the ultimate corporate parent. *Valideus (30 Dec. 2013); KPMG (6 Jan. 2014); Reckitt Benckiser (8 Jan. 2014); BBVA (8 Jan. 2014); HSBC (9 Jan. 2013); MarkMonitor (10 Jan. 2014); BRG (31 Jan. 2014); Google (31 Jan. 2014); Katten on behalf of Specific Brand Owners (31 Jan. 2014)*

With respect to the discrepancy between Sections 5.1(i) b and 5.1(i) f, the language should be amended to allow either the Registry Operator or an Affiliate of the Registry Operator to be the entity that uses the trademark corresponding to the .BRAND in the conduct of one or more businesses other than providing TLD Registry Services. *NCTA (31 Jan. 2014)*

FairWinds Partners encourages the inclusion of Affiliates in Sections 5.1(i) d and 5.1 (i)f to reflect that many brands applied for gTLDs through subsidiaries that do not necessarily use the relevant trademark in the ordinary course of their business or that may have been formed specifically for the purpose of the New gTLD Application Program. *FairWinds Partners (9 Jan. 2014); AFMI (29 Jan. 2014)*

Section 5.1(i) f should be amended by adding the term “and Affiliate” after “Registry Operator” so the brand owner’s affiliate can use the corporate .BRAND gTLD. This delineation of “Affiliate” comports with how the term “Affiliate” is used throughout Section 5 of Specification 13 and is fully consistent with the purpose of this provision. *IPC (9 Jan. 2014)*

The definition of .BRAND as written would effectively exclude all brand owners who applied for a .BRAND TLD through a subsidiary entity. Sections 5.1(i) d and 5.1(i) f should be revised so that the term “Registry Operator” is replaced with “Registry Operator or its Affiliate.” Relatedly, IEEE requests that ICANN provide a method for obtaining pre-approval by ICANN of an entity’s designation as an “Affiliate” to reduce the risk of unexpected determinations once the TLD registry is operating. *IEEE Global (9 Jan. 2014); INTA Internet Committee (31 Jan. 2014); BC (31 Jan. 2014); Google (31 Jan. 2014)*

Analysis: ICANN Staff will consider these comments when considering revisions to Specification 13.

Use of the Word “Void” in Specification 13. Richemont proposes a wording change to the second paragraph of the Specification 13 introductory section to replace use of the word “void” to cover a situation where the TLD is effectively no longer a “.BRAND TLD.” Richemont is not comfortable with this approach because in certain legal jurisdictions outside of the U.S. the use of the word “void” in a contractual arrangement would mean that Specification 13 may be treated by the parties as to never have been in existence. This is not the intention of Specification 13. Richemont therefore proposes for the second paragraph specific text to replace the use of the word void (“no longer have effect from such date”-see Richemont comments text). *Richemont (9 Jan. 2014)*

Analysis: ICANN Staff will consider these comments when considering revisions to Specification 13.

“.BRAND TLDs” and “Trademark Licensee” Definition.

Richemont has a concern that the “.BRAND TLDs” and “Trademark Licensee” definitions do not cover its *JLC* application which is a globally-recognized acronym for its famous *JAEGER-LECOULTRE* registered trademark. To address this concern, Richemont therefore proposes specific changes (e.g. “or is a recognized abbreviation or acronym of) to the text of paragraph 5 of Specification 13 (Sections 5.1 (i) and 5.2--see Richemont comments text). *Richemont (9 Jan. 2014)*

Analysis: ICANN Staff will consider these comments when considering revisions to Specification 13. It is currently anticipated that the application process for qualification as a .Brand TLD will permit Registry Operator’s whose TLD does not meet the technical requirement of Specification 13 to nonetheless apply for .Brand TLD status.

“Back-Door gTLDs”: Rules for “Licensees” as Part of a “Single Registrant.”

Inclusion of “licensees” as part of a “single registrant” might be abused to inappropriately avoid the use of registrars. Understanding that there are cases where a licensee might be an appropriate registrant for a single-registrant TLD, a set of rules should be developed to govern and monitor this practice. *DNA (9 Jan. 2014)*

Key-Systems has great concerns regarding the potential consequences from the proposed ability of .BRAND registries to extend registrations in their TLDs to “Trademark Licensees.” This could be gamed to enable the complete circumvention of the registry-registrar model. Key -Systems therefore opposes the inclusion of trademark licensees as eligible registrants in .BRAND TLDs unless the gaming potential can be eliminated by narrowing the definition of trademark licensees to exclude licenses granted only or mainly for the purpose of allowing the registration and/or use of the domain name. *Key-Systems (10 Jan. 2014)*

The loophole in Specification 13 which could allow an owner of a fortuitously arbitrary mark to effectively use the BRAND TLD as a gTLD which routes around conduct requirements of gTLDs can be addressed by requiring that domain names registered to the registry, affiliates and licensees be used for purposes relating to the basis on which the trade or service mark is premised. *J. Berryhill (10 Jan. 2014)*

- This can be accomplished by adding an additional conjunctive requirement to Section 5.1, along the lines of: (iv) domain names in the TLD are required to be used for promotion, support, distribution, sales, or other services reasonably related to the goods and services for which the trade or service mark was issued. *J. Berryhill (10 Jan. 2014)*
- Or to put a finer point on it: (iv) domain names in the TLD are required to be used for promotion, support, distribution, sales, or other services reasonably related to the goods or services for which the trade or service mark was issued, and not for purposes for which the trademark string otherwise has primary meaning as a generic indication of other goods or services. *J. Berryhill (10 Jan. 2014)*

Undersigned Registrars have an overall concern that if Specification 13 is adopted as written, it could re-introduce the concerns of equal registrar access and undermine the registry-registrar model for domain

names. This could give rise to TLDs where the registry, registrar and registrant (or a subset of those roles) are the same entity, and the beneficial user of the domain name lies with another party. *Blacknight et al. (3 Feb. 2014)*

- For example, a broad interpretation of 5.1 (ii) and 5.2 would seem to imply that the TLD could offer a limited license of its trademark to unaffiliated third parties, and then permit these licensees to register or use domain names in the TLD. These licensees would behave like registrants but without the rights or responsibilities currently provided under the RAA and ICANN Consensus Policies. *EuroDNS; GoDaddy; Web.com; Name.com; Key-Systems; Realtime Register; NetEarthOne; HostEurope Group; Astutium Ltd.; Nordreg AB; Blacknight (3 Feb. 2014)*
- To address this problem in the current proposal, the phrase “Trademark Licensee” and the entirety of Section 5.2 should be struck. *EuroDNS; GoDaddy; Web.com; Name.com; Key-Systems; Realtime Register; NetEarthOne; HostEurope Group; Astutium Ltd.; Nordreg AB; Blacknight (3 Feb. 2014)*

INTA Internet Committee disagrees with Key-Systems comment opposing inclusion of Affiliates in Subsections (d) and (f) unless the definition of “Affiliate” excludes entities that have been granted a trademark license only or mainly for the purpose of allowing use of the .BRAND TLD. This proposal is unnecessary and invites a difficult-to-apply evaluative standard and creates artificial boundaries precluding, for example, new corporate subsidiaries from advancing the objectives of the TLD. *INTA Internet Committee (31 Jan. 2014)*

- Inclusion of Affiliates or Trademark Licensees in the definition of .BRAND TLD does not create any discernible risk of “gaming.” Affiliates and Trademark Licensees are discrete sets of entities. Trademark holders have an overarching interest in protecting the integrity of their marks that will mitigate against misuse by Affiliates/Licensees and against overexpansion of this group, and thus potential consumer confusion/harm or dilution of the trademark. *INTA Internet Committee (31 Jan. 2014)*
- Hypothetical gaming scenarios presented in some of the comments are highly unlikely. Brand owners have made significant investments in promoting their brands and the incremental revenue from these types of licenses is not worth the cost of dilution or other associated harms. In the unlikely event that fringe players sought to profit from this type of scheme, as provided in paragraph 2 of Specification 13, ICANN has the authority to take remedial action at any time. *INTA Internet Committee (31 Jan. 2014)*
- The limitations in Section 5.1(ii) that only the Registry Operator, its Affiliates, or Trademark Licensees can register domain names and control the DNS records at any level in the TLD, coupled with the required annual compliance reviews that must be performed by the party ultimately responsible for the TLD--the Registry Operator--and public posting of the review results, will protect against any risk of a loss of centralized control as well as provide oversight against “gaming.” *INTA Internet Committee (31 Jan. 2014)*
- Including Trademark Licensees fosters innovative uses of TLDs, consistent with ICANN’s goal for the New gTLD Program. Permitting .BRANDs to showcase partnerships, co-branded initiatives, cooperative charitable efforts, and the like, will allow brand owners to deploy their TLDs as more than static channels for the promotion of product lines, to the benefit of Internet users. *INTA Internet Committee (31 Jan. 2014)*

Analysis: ICANN Staff will consider these comments when considering revisions to Specification 13, and will likely modify Specification 13 in certain of the manners suggested by the commentators.

Procedure for Seeking Recognition as a .BRAND

There is no defined procedure in Specification 13 by which a new gTLD Registry Operator can seek recognition as a .BRAND TLD. *NCTA (31 Jan. 2014)*

- NCTA suggests that Section 1 of Specification 13 be amended to include language such as: “In the event that a Registry Operator requests that its TLD be deemed to be a .BRAND TLD, ICANN shall grant such request if Registry Operator demonstrates to ICANN’s reasonable satisfaction that the TLD meets the requirements of Section 5.1 of this Specification 13. Within 30 days of the request, ICANN shall provide the Registry Operator with written notice of its determination.” The standard for granting the request is consistent with the standard set forth in Specification 13 (p. 1, second paragraph, clause (i)) regarding a Registry Operator’s effort to convince ICANN to revoke its determination that its TLD no longer qualifies as a .BRAND TLD. *NCTA (31 Jan. 2014)*
- NCTA also suggests that in the event that a request or application for classification as a .BRAND is rejected, ICANN should either make Article 5 (Dispute Resolution) of the Registry Agreement applicable to the determination or create an alternative procedure by which reconsideration can be requested. *NCTA (31 Jan. 2014)*

Analysis: If Specification 13 is adopted and implemented, ICANN will develop and post a procedure for applying for qualification as a .Brand TLD.