

W.W. Grainger, Inc. (“Grainger”) thanks ICANN for the opportunity to participate in the reply window for comments regarding the proposed draft Registry Agreement for new gTLDs (“RA”). Grainger looks forward to participating in the dialogue regarding this issue. By way of background, with \$9 billion in sales in 2012, Grainger is a Fortune 500 company and a perennial member of Fortune magazine's Most Admired Companies list. Grainger is the 15th largest e-tailer in the United States and Canada providing more than 1 million products to its customers, which are supplied by over 4,000 key suppliers. Grainger has 715 branches worldwide and its customers make up approximately 2 million businesses and institutions in 157 countries. While each customer has a unique facility to operate and a different problem to solve, Grainger’s customers all share one requirement: when they need one of Grainger's products, they often need it right away. With more than 22,400 team members worldwide, the Grainger team works closely with its customers to better understand their challenges and provide cost-saving solutions. Grainger's team members serve customers around 96,000 times every day through multiple channels. Grainger is also the parent company of the applicants for the <.grainger> and <.safety> top level domain names.

Grainger supports the public comments related to the concerns of applicants whose new gTLD applications are for strings that they have trademark rights in (“.brands”) in relationship to the RA made by Fairwinds Partners, Valideus, Yahoo!, and Richemont. Grainger draws the following specific issues to ICANN’s attention as it views them as vital to the viability of .brands:

Section 2.13

It is vital that the RA make it clear that any Emergency Back-end Registry Operator (“EBERO”) which may provide services for a .brand gTLD will not gain trademark rights to the relevant trademark in so doing. The RA should require that the EBERO disclaims any rights in the relevant trademark and that it agree in writing not to challenge registry operator’s rights to the trademark as a condition for providing any services for a .brand.

Section 4.3(d)(iv)

This section would allow termination by ICANN if any property of a .brand registry is levied. For example, if a .brand registry had routine maintenance work completed and the contractor filed a mechanics lien in the ordinary course, ICANN would have the right to terminate the agreement – even if payment were timely made on the contractor’s bill. This section needs to be revised to reflect business realities in the marketplace.

Termination Generally

The RA must be revised to ensure that the .brand registry winds down upon termination, whether that termination is initiated by ICANN or the registry operator and whether it for cause or not, and is not reassigned. The risk of having ICANN reassign a .brand registry is too great a risk, to both the registry operator and the general public, as it is likely in many cases, particularly where the registry operator has actively used and registered domain names in a .brand, that the general public will associate domain names in the .brand with the registry operator, such that reassigning the .brand to an unrelated party would cause confusion. Furthermore, giving ICANN the ability to reassign a .brand places too much power in the hands of ICANN in future negotiations over RA changes or consensus policy revisions. Changes need to be made throughout the RA to address this concern.

Section 7.12

This section of the RA needs to explicitly acknowledge the .brand registry operator's rights in the trademark(s) which comprise the .brand TLD string and ICANN needs to explicitly agree that it does not gain any rights in such trademark by delegating the TLD. The section should also have a clear non-challenge provision.

Grainger notes that the above issues are non-exhaustive and that the Brand Registry Group ("BRG"), of which Grainger is a supporter, has provided greater detail on these and other important issues facing .brand applicants. Grainger encourages ICANN to review these issues and the ones put forward by the BRG, and to engage in a dialogue for the purpose of agreeing on a .brand template agreement that reflects marketplace realities and the issues that arise from operation of a .brand gTLD.

Thank you for your consideration.