

**RICHEMONT DNS INC.**  
**20 MAY 2013**

We set out below Richemont DNS Inc.’s (“**Richemont**”) comments in respect of ICANN’s Registry Agreement dated 29 April 2013. The comments apply in respect of Richemont’s brand applications (e.g. .netaporter) (referred to as “**Brand gTLDs**”) and Richemont’s generic applications (e.g. .watches) (referred to as “**Generic gTLDs**”). Where our comments are specific to either the Brand gTLDs or the Generic gTLDs, our comments will state so accordingly. Where our comments are not specific, the comments apply to both the Brand gTLDs and the Generic gTLDs.

As part of Richemont’s review process, Richemont has consulted with a number of other brands that form part of the Brand Registry Group. As a result, many of the comments below will be further documented through the Brand Registry Group.

Section	Obligation/Requirement	Issue/Group Concern
RA Article 2.1 – Approved Services; Additional Services	Approved Services / Additional Services	<p>Registries must submit services outside of the list of “Approved Services” to ICANN for consideration under ICANN’s Registry Services Evaluation Policy (RSEP). This provision has the potential to restrict Richemont’s ability to offer innovative services via its new gTLDs by requiring services that are not currently defined as Approved Services to go through the RSEP process. Historically, the RSEP process has been quite lengthy and most notably includes a public comment period. This is likely to be the case even with the new “material” change language – for instance, it is unclear whether back end registry services changes would rise to “material” changes if only technical in nature. We prefer that Richemont’s reasonable changes to its business proposition not be subject to the RSEP process.</p> <p>Richemont would prefer that the RSEP process is only used where a proposed service touches upon what ICANN has deemed the five (5) critical registry functions. All other changes and/or additions should simply be subject to the prior consent of ICANN, and such consent should not be unreasonably withheld or delayed.</p>
RA Article 2.2 – Consensus Policies and Temporary	Consensus Policies	The procedure for implementing new Consensus Polices is unclear. As a new Consensus Policy could impact the way in which Richemont runs its gTLDs, Richemont requires a right to wind down the registry should the change have a material impact

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Policies		<p>upon its business.</p> <p>For Brand gTLDs, (i) there should be an ability to wind down the registry (and such registry should not be available for use by anyone else for at least two application cycles or similar time frame) if an adopted Consensus Policy impacts our business and (ii) the process for involving registries in the consensus policy development process should be clearly defined with adequate reviews and appeals.</p>
RA Article 2.5 – Publication of Registration Data	Publication of Registration Data	<p>This provision should be explicitly subject to all applicable data protection laws and regulations. Most notably, the EU data protection directive (currently subject to overhaul) and US safe harbor and applicable State data protection laws. Handling personal data, including where applicable, registrant data and payment information, must be done in accordance with all applicable laws and regulations. There should be such an exemption for at least any registration data that could be considered personally identifiable information or personal data, as this risks putting registries in breach of applicable law.</p>
RA Article 2.8 – Protection of Legal Rights of Third Parties	Rights Protection Mechanisms	<p>See our comments on Specification 7 (below).</p>
Article 2.9a – Use of Registrars	Registrars	<p>There are general requirements to allow non-discriminatory access to Registry Services to all registrars. For Brand gTLDs, Richemont would prefer to work with its own trusted registrars. Given that most .brand registries would likely have the same interest, the non-discriminatory requirement is less relevant in closed registries, and we propose that it should be removed. At the very least, it should be made clear that a .brand registry operator will not be penalised for utilising a registrar of its choice for handling all second-level domain name registrations or that a .brand registry operator may only</p>

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		enter into Registry-Registrar Agreements with registrars of its choice.
Article 2.10 – Pricing	Pricing	For its Brand gTLDs and Generic gTLDs, the purpose of Richemont’s proposition is not to sell significant numbers of registrations and renewals, but to promote genuine and authentic brands. Accordingly, much of the language in Article 2.10 is there to prevent abusive and/or discriminatory pricing and is therefore not as relevant in this context. We suggest that extraneous language be removed or made explicitly inapplicable to .brand registry operators. One way of approaching this issue would be to make Article 2.10 inapplicable to registry operators to whom an exemption to the Registry Operator Code of Conduct (Specification 9) has been granted.
RA Article 2.11 – Contractual and Operational Compliance Audits	Ongoing Audit Rights	<p>Richemont has the following concerns in respect of ICANN’s audit rights:</p> <ul style="list-style-type: none"> <li>• Richemont does not want audit rights to extend beyond the actual entity providing the Registry Services, including where the entity is a subcontracted third party;</li> <li>• Richemont does not want internal registration or security information being disseminated to third parties by ICANN. Richemont requires indemnification and/or additional protections (e.g. injunctions) should there be a breach of this provision; and</li> <li>• As the purpose of the gTLD is outside that of the standard domain name business, Richemont should not be responsible for to costs of any audit pursuant to the requirements of Article 2.11b.</li> </ul>
Article 2.13	Emergency Transition	Richemont are concerned that any emergency transition operator will not necessarily operate the gTLDs in accordance with the mission and purpose of the gTLD (e.g. for the prevention of counterfeiting etc.). Richemont therefore requires further protection

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		should an emergency transition take place.
RA Article 2.14 – Registry Code of Conduct	Registry Code of Conduct	See our comments on Specification 9 (below).
RA Article 2.15 – Cooperation with Economic Studies	Economic Studies	<p>This section requires Registry Operators to provide “all data reasonably necessary for the purposes of” ICANN economic studies. Richemont has the following concerns:</p> <ul style="list-style-type: none"> <li>• There is no limitation on the amount, nature or burden of the data;</li> <li>• There is no limitation on the amount of studies which can request data from a registry; and</li> <li>• There is no mention of reimbursement for costs in preparing or anonymizing data.</li> </ul> <p>The production of data should be subject to applicable laws. Given how many registries Richemont shall be operating, complying with an undue amount of requests for data could be costly. Richemont would therefore request that only essential and generic information should be provided as part of this process.</p>
RA Article 2.16 – Public Interest Commitment	Public interest commitments	See our comments on Specification 11 (below).
RA Article 2.18 – Personal Data	Personal Data	This language will need to be updated to reflect the mandatory requirements of European data protection laws and, where applicable, reference the US safe harbor programme.
RA Article	Termination for breach of payment	The right to terminate for any breach of any payment obligation is too strict. It is

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4.2(a)(i)/4.3 – Termination	obligations	sufficient for non-payment to be included within a material or fundamental breach of the Registry Agreement and not a separate termination right. For example, a failure to make payment by one day is essentially a breach of the payment obligations, but it is not sufficiently material to allow for termination of the Registry Agreement.
RA 4.3 (d)(iv) – Termination	Termination for levy being made against property	This wording needs to be clarified as levies are regularly made against properties and this does not fit within the standard “insolvency event” wording.
RA 4.3 (e) – Termination	Termination for breach of Specification 7 and 11	For Brand gTLDs, the termination right for ICANN for any breach of the relevant specifications needs to be restricted to the extent that the obligations relating to rights protections mechanisms (Specification 7) and public interest commitments (Specification 11) are not required for brand-related gTLDs.
RA Article 4.5 – Transition Upon Termination	General Transition	ICANN has an overriding right to transition the registry on any termination. ICANN should not have the right to transition any gTLD in circumstances where the registry has terminated the Registry Agreement as a result of a default of ICANN.
RA Article 4.5 – Transition Upon Termination	General Transition	<p>To the extent that Brand gTLDs are allowed to delegate names to affiliates, customers, affiliates, licensees, advertisers and dealers etc., then the provisions in Article 4.5 relating to “own exclusive use” should be broadened accordingly.</p> <p>Richemont may also have broader reasons to object to a successor registry operator taking over the platform – e.g. the new operator may allow the gTLD to sell counterfeit products which would destroy the goodwill created by Richemont, i.e. the very reason for applying in the first place. Flexibility in the language is required to accommodate all reasonable requests not to transition over to a new operator. These comments are in addition to our specific intellectual property points below.</p>

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RA Article 4.5 – Transition Upon Termination	ICANN’s obligation to take into account intellectual property rights on any transition.	<p>This provision now requires ICANN to take into account a registry’s intellectual property rights when making a transition determination, but this may not be sufficient to protect either a Brand gTLD or a Generic gTLD, especially where second-level domains have been provided to affiliates or others in the relevant industry. The preferred language should consider the following:</p> <ul style="list-style-type: none"> <li>• a right for the registry operator to transfer the gTLD to a nominated third party (such as a trusted industry-led foundation); and</li> <li>• a prohibition of transferring the gTLD where either (i) the gTLD contains the registered trademark of the registry operator; or (ii) the registry operator was otherwise responsible for all the registrations in the gTLD.</li> </ul>
RA Article 5.2 – Arbitration	General arbitration	<p>The following provisions should be reflected in Article 5.2:</p> <ul style="list-style-type: none"> <li>• punitive or exemplary damages should not be permitted;</li> <li>• arbitration should be subject to both the consent of the registry operator and ICANN; and</li> <li>• the location of the arbitration should be mutually agreed.</li> </ul>
RA Article 5.3 – Limitation of Liability.	Limitation of liability provisions	<p>The following provisions should be reflected in Article 5.2 :</p> <ul style="list-style-type: none"> <li>• punitive or exemplary damages should not be permitted under any circumstances;</li> <li>• liability should not be excluded for fraud, confidentiality, data protection, death or personal injury caused by negligence (mandatory in many EU jurisdictions), intellectual property infringement and any other liability that cannot be excluded by applicable law.</li> </ul>

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RA Article 7.1 – Indemnification of ICANN	Indemnification obligations	The indemnification obligation is completely one-sided and should have some reciprocity.
Article 7.5 – Change of Control	Change of control/assignment	Certain changes in control/assignments will be highly confidential and 30 days advance notice will not always be possible. In such circumstances, Richemont would prefer for consent to be obtained on the change of control and for there to be a right of termination for ICANN if the change of control was not “reasonable”.
Article 7.12	Ownership rights	<p>Richemont require that specific reference is made to the fact that ICANN or any of its third party vendors shall not seek to obtain any intellectual property rights over the terms to which the gTLD corresponds.</p> <p>We also require a mutual non-infringement warranty relating to the use by the other of any intellectual property rights supplied by a party under the Registry Agreement.</p>
RA Specification 4, 2.1.1/2.1.3	Zone File Access Agreement / Grant of Access	We require that for both our Brand gTLDs and Generic gTLDs the obligation for the provision of information for the relevant file is limited so as to exclude any proprietary information contained within it.
RA Specification 5 – Article 5 – Reserved Names at the Second Level – Two-character Labels	Use of two-character labels as second-level domain names (e.g. uk.netaporter) are still subject to GAC and ICANN review prior to usage.	Such names may be valuable as portals for the Brand gTLDs. Accordingly, it is suggested that ICANN and the GAC develop a streamlined process whereby such names can be more easily released for usage. It would be highly inefficient for the registries to individually reach agreement with the governments and country-code managers. As such, the GAC and ICANN prior review and consent requirements should be removed.

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RA Specification 5 – Article 5 – Reserved Names at the Second Level – Country and Territory Names	Use of country codes or country names as second-level domain names are still subject to GAC and ICANN review prior to usage.	Such names may be valuable as portals for the Brand gTLDs. Accordingly, we require a streamlined process whereby such names can be more easily released for usage. It would be highly inefficient for the registries to individually reach agreement with the governments and country-code managers.
Specification 9 – Article 6 – Exemption to Registry Operator Code of Conduct	Exemptions from the Registry Operator Code of Conduct (ROCC)	The Brand gTLDs be exempt from the ROCC.  With regard to the operation of the ROCC exemption, it is unclear how ICANN shall interpret the “transfer control or use” language which is critical to developing plans for using our Brand gTLD registries. The exemption from the ROCC must be broad enough to allow our Brand gTLDs to provide second-level domains to customers, affiliates, licensees, advertisers, dealers, etc. However, at the moment, it remains very unclear.
Specification 11	Public Interest Commitment	For Generic gTLDs, Richemont would prefer that Public Interest Commitments are taken from a clear set of ICANN published statements with appropriate ICANN enforcement guidelines. Richemont does not wish to be challenged by third parties to the extent there is any ambiguity in respect of its public interest commitment.  For Brand gTLDs, Richemont does not consider that Article 2.16 or Specification 11 is required.