

Comment to ICANN on the Proposed Final New gTLD Registry Agreement

The undersigned companies, each of which applied for one or more new gTLDs, respectfully submit our comments in response to the latest draft of the New gTLD Registry Agreement.

Brand owners appreciate the progress that has been made on the Registry Agreement through the various negotiations that have taken place both during and since the ICANN Public Meeting in Beijing. At the same time, there remain outstanding issues that make the current Registry Agreement difficult for the undersigned brand owners to sign.

As stated in the New gTLD Applicant Guidebook, ICANN's goal in opening up the top-level domain space was to "foster diversity, encourage competition, and enhance the utility of the DNS." By applying for their own new gTLDs, many of which correspond to branded terms, brand owners will introduce a new business model that has not previously existed in the gTLD space. Such applications represent approximately one-third of the over 1,900 total new gTLD applications and nearly half of all applications for unique (non-duplicative) strings.

Given the broad participation of brand owners in the New gTLD Program, the undersigned strongly urge ICANN to recognize the unique requirements of this group of future gTLD Registry Operators. The most comprehensive and effective solution would be to develop a second template draft of the New gTLD Registry Agreement. This would allow individual brand owners to negotiate their own future Agreements off of a template that corresponds to their fundamental legal interests. Please find below a summary of fundamental points to be incorporated into a new template or to be drafted into the existing Agreement:

1. A registry should not be transitioned upon termination of the Registry Agreement in cases where no domains have been sold, distributed or transferred to unaffiliated third parties, or where the gTLD corresponds to a trademark owned by the Registry Operator.
2. The Emergency Back End Registry Operator should be required to maintain the registration restrictions established by the Registry Operator during a period of emergency transition.
3. ICANN or third-party vendors involved in the operation of a gTLD should not seek or gain trademark or other intellectual property rights over the mark to which a gTLD refers.
4. The maximum aggregate monetary liability of the Registry Operator should be equal to that of ICANN.
5. ICANN should be required to indemnify the Registry Operator from all claims, damages, liabilities, costs, and expenses unless incurred due to willful omission or breach of the Registry Agreement.
6. Confidentiality provisions should be expanded, and should incorporate appropriate remedies in cases where breaches in confidentiality result in material harm to the Registry Operator.

7. ICANN should allow the release of reserved geographic names and two-character labels for use by the Registry Operator in conjunction with the promotion or operation of the registry.
8. Technical and financial audits should be restricted to the relevant service provider(s) or the Registry Operator, respectively, and not extend to corporate parent companies in cases where the Registry Operator is a subsidiary. Registry operators should not be required to bear the cost of audits, even if registry functions have been outsourced to an ICANN-accredited registrar.
9. A clear, streamlined process should be established to grant exemption to the Code of Conduct, provided that the Registry Operator does not sell, distribute, or transfer control of second-level domains to unaffiliated third parties.
10. A Registry Operator should not be required to implement a Sunrise Period or Claims Service and pay associated fees in cases where registration restrictions prevent unaffiliated third parties from registering within the gTLD.

We appreciate the opportunity to offer comment on this issue and look forward to working with ICANN to develop changes to the existing Registry Agreement or to develop a second template Registry Agreement.

Sincerely,

FairWinds Partners, LLC
Walmart Stores, Inc.
Bank of America Corporation
Xerox Corporation
Chanel S.A.
Pfizer, Inc.
Intel Corporation
The Corporate Executive Board Company
Tiffany & Co.
SAS Institute
Zippo Manufacturing Company
American Family Insurance Group
FLIR Systems, Inc.
Bloomberg IP Holdings LLC
Boehringer Ingelheim
Rezolve Group, Inc.
Tata Motors Limited