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Hogan Lovells Comments on the Proposal for a Specification 13 to the ICANN Registry Agreement to Contractually Reflect Certain Limited Aspects of '.Brand' New gTLDs

Hogan Lovells is a global legal practice that helps corporations, financial institutions, and governmental entities across the spectrum of their critical business and legal issues globally and locally. We have over 2,500 lawyers operating out of more than 40 offices in the United States, Europe, Latin America, the Middle East, and Asia. We have engaged in the ICANN new gTLD process since its inception and Hogan Lovells welcomes this opportunity to comment on the proposed Specification 13 to the Registry Agreement.

At the outset we wish to take the opportunity to thank the BRG for its work in this proposition together with ICANN for initiating a public comment period on the subject.

The potential need for a specific .Brand category of TLDs has long been extolled by many groups, in particular by the IPC and we have been and remain fully behind the creation of such a category. As such, it is eminently sensible to have an appropriate registry agreement for such .Brand TLDs since they are fundamentally different to the bulk of other new gTLD applicants in particular because they do not intend to sell second-level domain names to the general public.

As such we fully support the proposed Specification 13 to the standard Registry Agreement for .Brand TLDs and in response to ICANN's posting for public comment we respectfully submit the following comments for consideration by the ICANN Board and in particular with regard to the following specific points raised by ICANN:

1. Whether it is appropriate to classify certain TLDs as “.Brand TLDs”

We are of the view that this is not only appropriate but necessary particularly given that almost a third of the total applicants are .Brand applications. .Brand TLDs have a different purpose which is to further develop an existing brand and therefore call for specific contractual and operating requirements that are not adequately addressed in the Registry Agreement as it stands. Thus, classifying certain TLDs as .Brand TLDs is appropriate in order to clearly define the purpose of .Brand TLDs and to tailor the specific contractual and operational requirements that will adequately address those needs.

2. Whether the definition of “.Brand TLD” is sufficiently narrow to capture only what is commonly recognized as a corporate brand.

We feel that the definition of .Brand TLD is indeed sufficiently narrow to capture what is commonly recognized as a corporate brand.

3. Whether there may be unintended consequences associated with the implementation of draft Specification 13.

We are not aware of any unintended consequences associated with the implementation of the proposed Specification 13. However, we are of the opinion that, although it is difficult to predict all possible consequences, the proposed definition of .Brand TLDs has been narrowly crafted with a view to minimizing any unintended consequence.

4. 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).

.Brand TLDs are intended to be used by the .Brand registry and/or its affiliates. In view of the purpose of .Brand TLDs, as described above, based on security concerns and other operational issues it is appropriate to allow .Brand registries to limit their registrar use to a limited number of ICANN-accredited registrars.

5. 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).

The proposed two year "cooling off" period prior to re-delegation of the .Brand TLD upon expiration or termination the Registry Agreement is appropriate and reasonable to avoid risk of confusion or unintended consequences as a result of the re-delegation of a .Brand TLD.

6. The proposed deferred Sunrise

Finally, we support NTAG's proposal for a "deferred" Sunrise Period for .Brand TLDs, as established in its public comments dated 20 December 2013. As previously mentioned, given the specificities of .Brand TLDs, a Sunrise Period is unnecessary as .Brand TLDs will not be open to third parties but will be limited to the .Brand registry and its affiliates. Therefore, a Sunrise period imposes an unnecessary delay for the operation of .Brand TLDs. In this regard, NTAG's proposal to defer the Sunrise period requirements until the .Brand TLD opens its eligibility criteria to third parties adequately addresses the specificities of .Brand registries.

In view of the foregoing, the undersigned respectfully requests the ICANN Board to incorporate the proposed Specification 13 to the standard Registry Agreement in order to address the specificities of .Brand applicants.

Respectfully submitted,

David Taylor,
Partner
Hogan Lovells