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Re: Proposal for a Specification 13 to the ICANN Registry Agreement to Contractually Reflect Certain Limited Aspects of ".Brand" New gTLDs

First, it is appropriate that the work of ICANN and the Brand Registry Group in bringing the present proposal to fruition is acknowledged. ICANN's introduction of this Specification 13 would bring mutually-beneficial contracting efficiency to ICANN and hundreds of applicants.

In addition to commenting on the five questions posed by ICANN as part of this public consultation exercise, KPMG also proposes the amendment below to section 5.1 of Specification 13, to align with the changes already implemented by ICANN in the Registry Agreement:

Reflecting corporate structures

During the course of public comments on the Registry Agreement, ICANN changed Registry Agreement section 7.5 to streamline a change of control between existing TLD operators.

In this same spirit, we propose the following change at 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 the fact that .Brand applicants may not themselves own the reputation and goodwill in the .Brand-corresponding trademark, but would necessarily fall within the same corporate structure as the ultimate corporate parent.

ICANN's questions relating to Specification 13:

Whether it is appropriate to classify certain TLDs as ".Brand TLDs"

Yes, it is. A key objective of the gTLD liberalization process, as articulated by ICANN, is to 'enhance the utility of the DNS'.

Many brand applicants, which represent about a third of the overall number of gTLD applicants, have wholly different motivations for operating a secure gTLD registry at the world root of the Internet, from incumbent domain industry actors and new gTLD start-ups, who essentially view this liberalization of the DNS as an expansion of the existing domain name market.

Such brand applicants will drive technological, business model and business process improvements and innovations, utilizing the new capabilities that operating a gTLD registry affords. These capabilities include security (especially DNSSEC), control (trusted space, free from malicious actors) and authenticity (e.g. only the brand, its affiliates and trusted third parties – if it's not 'dot brand' it's not authentic – this will help combat counterfeiting, fraud, 'passing off' and other malicious acts).

The table below outlines key 'CXO' business concerns and how brands may utilize gTLD registry capabilities to address such business concerns:

Area	Concerns	gTLD registry
Customer Revenue Growth	Customer relationships Product/services innovation Brand(s) New products and services within existing business models More marketing investment Prioritizing investments Innovation through product development Adapt to changing customer and stakeholder behaviour Improve marketing/sales efficiency	Innovation in digital delivery of customer services Customers signal brand affinity through unique domain Supports shift to internet-centric business processes and models
Operating Effectiveness	Innovation (New technologies; culture; alliances) R&D, intellectual property Reduce enterprise costs Deliver operational results Improve enterprise efficiency Improve business processes Lower operating costs Improve product/process quality Improve ability to innovate Improve business flexibility Reengineer business processes	Integration with existing ERP systems for operational efficiencies Signal authentic IP Possible reengineer existing business processes
Transformation	Prepare for major business model changes Business model innovation Framing and/or adapting strategy	Internet IaaS – scalable, platform for innovation – for applicants only!
Technology Change	Cloud computing (SaaS, IaaS, PaaS) Implement or expand use of collaboration capabilities	gTLD registries are outsourced IaaS and could readily evolve to SaaS gTLD platform for innovation

	Social media/Web 2.0 Pursue apps or infrastructure outsourcing Expand use of mobile/tablet (not laptop PCs) Creating of unique new products, services, or business models dependent on cloud solutions for delivery Embedded computing (e.g., smart sensors) to automate or control internal processes or systems	– services and even business models
Data Analytics	Data and analytics to improve business processes or customer engagement Increase use of business intelligence and decision-support tools and services Converging data architectures (un/structured data) Location-based models of complex data	Improved insight and control of information flows Innovative use of DNS record fields for geo-targeting & verification of services
IT Management	Reduce IT costs Information privacy/security and cybersecurity Developing or managing a flexible infrastructure Improving IT management and governance Improving business alignment and relationship Consolidating IT operations and resources Improving the IT organization and workforce Significantly upgrade disaster recovery and business continuity capabilities	Outsourced IaaS Enhanced security: DNSSEC, additional certification and encryption Disaster recovery: zone files at world root of Internet

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

Operating a closed, or 'restricted open', brand gTLD registry as part of an organization's internet-facing IT infrastructure is a wholly different consideration to operating an open, generic registry for the purposes of selling domain names to interested third parties.

In effect, a brand gTLD registry operator and the registrant are the same legal entity (or the registrant is a legal entity owned or controlled (licensed) by the registry operator, or an affiliate that is part of the same corporate structure, but whose involvement with the gTLD registry is controlled by the brand registry operator).

The definition in proposed Specification 13 is sufficiently narrow to capture only what is commonly recognized as a corporate brand. However, ICANN may wish to consider additional broader, more holistic evidence in determining whether an existing, or potential future, applicant is a bona fide corporate brand, for example, evidence of third party brand rankings and evaluations. This 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.

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

It is impossible to forecast what 'unintended' consequences may arise as such consequences are, by their very nature, unforeseen.

However, in determining whether to formally recognize a .brand gTLD status that is distinct from open gTLDs, ICANN should also consider any possible impact of not implementing Specification 13.

The adoption of a clear policy and contractual framework by ICANN that recognizes 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.

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)

The open market access provision is a legacy artefact of open generic TLDs. In the case of .Brand gTLDs there is no basis for its imposition, as such registry operators would not be offering domains to the public on the open market.

Critically, 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 importantly, standards of conduct. There is established legal precedent wherein ICANN-registered registrars have been taken to court by corporate brands for infringement of trademark law.

Limiting registrar use to a carefully selected, trusted ICANN-accredited registrar, rather than providing open access to all ICANN-accredited registrars, will also 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.

The table below summarizes some differences in selecting a registrar, depending on type of gTLD registry:

Closed*	**Restricted Open**	**Open**
Selective allocation of domain names according to business objectives	Allocating lots of domain names to customers – brand affinity primary objective?	Selling lots of domain names to public
Incentive to innovate - exploiting gTLD registry capabilities	Incentive to promote – educate and entice customer base	Incentive to promote – sell lots of domain names
Only need one registrar - looking for trusted relationship and capability - financial stability - technological sophistication - security	One or all? - looking for scale and capability - financial stability - technological sophistication - security	Market channels scale: eco-system of registrars - what's your registrar sales 'pitch'? - branding and marketing - credit policies - more complicated systems integration - policing bad faith registrars

Everyone will need to invest in marketing and communications to drive adoption

*GAC – exclusive access registries corresponding to generic terms must be operated in the public interest

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).

Considering the 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.

Thank you for your intake and consideration of the above suggestions and comments; please do not hesitate to contact me should you require any clarification.

Kind regards,

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