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Re: Proposal for the incorporation of Specification 13 to the ICANN Registry Agreement to Contractually Reflect Certain Limited Aspects of “.BRAND” gTLDs

January 28, 2014

American Family Mutual Insurance Company urges the incorporation of the proposed Specification 13 into the ICANN Registry Agreement for .BRAND gTLD applications. The proposed Specification 13 results from extensive engagement and collaborative work between ICANN and the representatives of .BRAND applications. The modifications proposed in Specification 13, though narrow in scope, demonstrate ICANN’s sensitivity and accountability to the needs of a major subset of the new gTLD applicant pool. Furthermore, by recognizing and fostering a new model for gTLDs, absent from the existing space, the proposal encourages diversity within the Domain Name System, one of the stated goals of the New gTLD Program.

We believe that the incorporation of Specification 13 into the Registry Agreement for .BRAND gTLD applications stands to benefit applicants and consumers alike. By addressing some of brand owners’ collective concerns with the new gTLD Registry Agreement,ⁱ the incorporation of Specification 13 will allow .BRAND applicants to move through the contracting process and transition to delegation with greater speed and ease.ⁱⁱ Further, the implementation of Specification 13 will allow .BRAND applicants to operate their gTLDs in a manner that more closely aligns with the use cases proposed in their answers to Question 18 of their new gTLD applications, paving the way for more comprehensive use of gTLDs by brands.ⁱⁱⁱ Given the broad consumer bases and digital presences of many of the brands that applied for new gTLDs, and the benefits the .BRAND gTLD model presents in terms of online security and consumer trust, this could speed consumer adoption of new gTLDs, to the benefit of all applicants and Internet users.

Without detracting from our support for the proposed Specification 13, we propose two minor modifications to the language for ICANN’s consideration.

First, in the event that ICANN determines that a gTLD no longer qualifies as a .BRAND, we request that the Registry Operator be given 90 days from the receipt of notice by ICANN to fully meet the requirements of a .BRAND gTLD provided that, within 30 days, it indicates its intent to remain a .BRAND gTLD and that it is working in good faith to undertake any necessary remedial measures. This would account for the fact that certain remediation initiatives may take more than 30 days to be fully implemented by the Registry Operator.

Second, we encourage the inclusion of Affiliates in Sections 5.1(i)d and 5.1(i)f, to reflect the fact that many brands applied for gTLDs through subsidiaries that do not necessarily use the relevant trademark in the ordinary course of their business or that may have been formed specifically for the purpose of the New gTLD Application Program.

We thank ICANN for considering these recommendations, as well as for its continued engagement with brand representatives and its efforts in putting forward this Proposal for a Specification 13.

Sincerely,

Sean J. McMurrough
Assistant General Counsel | Corporate Legal Division
American Family Mutual Insurance Company

ⁱ Notably, while 206 Registry Agreements have been executed to date, only sixteen are for .BRAND gTLDs, which, in totality, account for nearly half of the unique strings applied for in the 2012 application round, suggesting that the existing Registry Agreement resents particular impediments to .BRAND Applicants.

ⁱⁱ Given the trademark rights tied up in a .BRAND TLD, the transition language put forward in the current Article 4.5 of the Registry Agreement is a nonstarter for many .BRAND applicants seeking to execute the Registry Agreement that would be alleviated through Specification 13, Section 3. Additionally, since all of the requirements for being granted an exemption to Specification 9 of the Registry Agreement are encapsulated in the .BRAND definition, Specification 13, Section 1 avoid unnecessary delays and redundancies by automatically granting .BRAND applicants an exemption to the Registry Operator Code of Conduct.

ⁱⁱⁱ Our .AMERICANFAMILY and .AMFAM applications specifically indicate American Family's intent to request an exemption from Specification 9 of the Registry Agreement and to operate the registries in such a way that conforms with the corresponding requirements. Additionally, promoting heightened security and guaranteed authenticity in consumers' online experiences are among the most commonly cited goals of .BRAND gTLD applications; providing brands with the opportunity to partner with one or more trusted registrar partners, Specification 13, Section 2, supports these goals, by allowing the Registry Operators of .BRAND TLDs to service their gTLDs with registrars with the strongest track record in terms of security and in combatting trademark infringement.