



January 9, 2014

Via Electronic Mail
comments-spec13-06dec13@icann.org

Re: Public Comment on Specification 13 by Google Inc.

Google strongly supports the proposed Specification 13 to the Registry Agreement. We believe Specification 13 makes sensible improvements that address the unique positioning of .BRAND applicants and we thank the Brand Registry Group and ICANN staff for their efforts in negotiating this provision.

Specification 13 Makes Needed Changes to the Registry Agreement for .BRAND TLDs

The single registrant model offered by .BRAND TLD applicants creates an opportunity for new TLDs focused on content and services related to a specific brand or business. We believe that exclusive use TLDs will offer creative ways to make the Internet better for both users and brand owners and will be an important source of innovation within the new gTLD program. The large number of .BRAND applications by a broad range of companies operating in many different industries makes it clear that this type of gTLD will be an important, helpful addition to the domain name landscape. In this context, Specification 13 proposes several important modifications to the Registry Agreement to accommodate the unique concerns and special business models of these .BRAND applicants. These changes will facilitate the launch of .BRAND TLDs, which we believe will benefit the entire new gTLD program by generating public awareness and excitement about new domain extensions.

The Changes Proposed in Specification 13 Acknowledge the Unique Position of Exclusive Use TLD Applicants

Specification 13 proposes a number of small, but meaningful modifications to the Registry Agreement for .BRAND TLD applicants. Among these are the proposed adjustments to Section 4.5 of the Registry Agreement regarding the transition of a registry upon termination of the Registry Agreement. Presently the language in Section 4.5 gives ICANN essentially unfettered discretion to transfer a TLD to another registry operator in the event of the termination of the Registry Agreement. We believe there is a substantial risk of consumer confusion in the event that ICANN transfers a branded TLD

that has previously been exclusively used by another entity to a new registry operator. While the new gTLD application process included safeguards and objection procedures that helped mitigate the likelihood of user confusion, those protections do not currently exist in Section 4.5, which raises unique concerns for .BRAND applicants who have an obligation to police how their brands are used. The proposed language acknowledges the prospect of confusion posed by the transition of exclusive use TLDs and creates a two-year period in which the .BRAND registry operator must consent to transition of the TLD to another registry. We think this is a reasonable compromise that mitigates the risk of consumer confusion while acknowledging ICANN's desire to continue operation of TLDs where appropriate.

Suggested Improvements to Specification 13

Although Specification 13 makes meaningful adjustments to the language in the Registry Agreement to address the particular circumstances of .BRAND TLDs, there are two additional improvements to the standard Registry Agreement that we advocate adding to Specification 13. The first, deferral of the Sunrise period, would serve the dual function of allowing .BRAND registry operators to make use of their new TLDs sooner while improving the protections available to trademark holders through the Sunrise period for .BRAND TLDs. The second, clarification of the Emergency Back-End Registry Operator ("EBERO") provision in Section 2.13, would guarantee that brand owners have control over whether their TLD continues operating in the event the registry falls below certain performance thresholds.

Deferral of Sunrise Period for .brand TLDs

Presently .BRAND TLD registries must hold a Sunrise period in which trademark holders can register domains that are in the Trademark Clearinghouse.¹ Registries are simultaneously permitted to establish policies governing who can register domains in the TLD, policies that apply to all phases of registration including Sunrise.² In the case of .BRAND TLDs, which are by definition exclusive use TLDs, registries will necessarily have in place policies preventing third parties from registering domains in the TLD, whether during the Sunrise period or during any later registration period. As a result of these policies, no trademark owners will actually be able to register domains during the Sunrise period. Instead of providing meaningful trademark protection for third parties, the Sunrise period will merely introduce unnecessary procedural delay for .BRAND registries who will only gain the unfettered ability to use domains in their TLD after the conclusion of the Sunrise period. And if the registry operator later opens the .BRAND TLD to third parties, there is presently no requirement that the registry operator hold a

¹The Trademark Clearinghouse Rights Protection Mechanism Requirements ("RPM Requirements"), incorporated into the Registry Agreement through Section 2.8 and Specification 7, obligate registry operators to offer a Sunrise period in which registration of domains is restricted to holders of Trademark Clearinghouse verified trademarks.

²See Section 2.3 of the RPM Requirements.

Sunrise period for trademark holders to protect their marks.

Our proposal is a deferral of the Sunrise period requirement for .BRAND TLDs until the registry operator decides to open the TLD to third-party domain registrations. Deferring the Sunrise period not only moves an important trademark protection mechanism to a time when those protections would actually be relevant to trademark holders, but it also eliminates the delay in launching .BRAND TLDs posed by the current requirement. Meanwhile, the Claims period will still provide trademark owners with protection during the time when the TLD is exclusively used by the .BRAND registry operator by notifying trademark owners if any Trademark Clearinghouse domains are registered. Deferring Sunrise for .BRAND applicants is a sensible change that improves the system for trademark holders, .BRAND applicants, and the new TLD program, which will benefit from the accelerated offering of a variety of new TLDs.

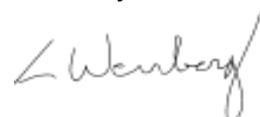
Provision Regarding the Appointment of an Emergency Back-End Registry Operator

A second modification that would improve Specification 13 relates to Section 2.13 addressing emergency transition of the registry if the registry falls below certain performance thresholds. In the event of a failure of a .BRAND TLD, brand owners should be able to decide whether to continue operating the TLD or to instead terminate the agreement pursuant to Section 4.4(b), which allows termination with 180 days notice. Therefore, we propose modifying the language in Section 2.13 to make it clear that if a .BRAND TLD operator chooses to terminate the Registry Agreement, ICANN is not permitted to appoint an EBERO.

Conclusion

We encourage ICANN to adopt Specification 13, along with the additional changes to the Sunrise and the EBERO provisions we propose in this comment. We believe these slight modifications to the Registry Agreement are important for addressing the unique business position of .BRAND TLDs, which are a critical component of the new gTLD ecosystem.

Sincerely,



Leigha E. Weinberg
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Google Inc.