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Microsoft

Microsoft Corporation's Comment in Support of Specification 13 for .Brand TLDs

As a member of the Brand Registry Group ("BRG"), Microsoft welcomes this opportunity to comment on the proposed Specification 13 to the Registry Agreement and thank ICANN and the BRG leadership for months of hard work in bringing this proposal to fruition. Microsoft supports the proposed Specification 13 and responds to ICANN's specific questions below.

Given that more than one third of all new gTLD applications are considered .Brand TLDs, it is more than appropriate to give these applications an official classification. As a group, they share common attributes that justify treatment as a separate class of application. Most importantly, the .Brand business model of restricting registration of second-level domains to the brand owner and/or its affiliates is inherently different from the traditional "open" model of maximizing second-level domain registrations. Given the overwhelming interest in operating closed environments corresponding to corporate brands, ICANN should recognize .Brand TLDs much as it already recognizes .Geos or Community-based TLDs. ICANN would also promote its Core Values by recognizing and treating .Brand TLDs as a separate class of application. This new business model will lead to innovation by forward-looking companies and will serve consumer interests by reducing confusion and fostering a stable and secure computing environment (Core Values 1 & 2). Additionally, by classifying such applications as ".Brands", ICANN will encourage additional brand applications from other companies in future rounds.

With respect to the definition of ".Brand", Microsoft believes that the definition is sufficiently narrow to capture what is commonly recognized as a corporate brand. In fact, it is so narrow that ICANN should be mindful of the possibility that some non-generic TLDs may not qualify as .Brand TLDs but could still be used by applicants in a branded sense. When those situations arise, ICANN should take a holistic approach in determining whether an application constitutes a .Brand TLD, and ICANN should not foreclose applicants' ability to seek exemptions to Specification 9 of the Code of Conduct for applications that are not "generic" TLDs.

Next, it makes sense to allow applicants for .Brand TLDs to work with the registrar or registrars of their choice. ICANN's Core Value of "introducing and promoting competition in the registration of domain names" is not relevant in this context where the registration of second-level domains is limited to the brand owner and its affiliates. Since second-level domains will not be offered for sale on the open market, there is no need to require equal access for registrars of .Brand TLDs. ICANN should therefore revise the second sentence of Section 2.9(a) of the Registry Agreement as proposed by Specification 13.

Finally, a two year "cooling off" period prior to re-delegation of a .Brand TLD upon expiration or termination of the Registry Agreement is reasonable. Microsoft recognizes that some companies may own the same trademark for different goods and services, thereby making a permanent bar to re-delegation too draconian. However, in those cases where confusion could occur through re-delegation, ICANN should clarify whether prior TLD owners would be allowed to bring Legal Rights Objections separate and apart from the mandatory dispute resolution process, or whether these processes would be combined.