



January 31, 2014

To: ICANN (comments-spec13-06dec13@icann.org)

From: National Cable & Telecommunications Association

Re: New gTLDs Program – Comments on Proposed Specification 13 (<.Brand> TLDs)

The National Cable & Telecommunications Association (“NCTA”) submits the following comments on the proposed amendment to the Registry Operating Agreement (“Specification 13”) that would recognize <.Brand> TLDs as a separate category of new gTLDs.

Introductory Statement

The National Cable & Telecommunications Association is the principal trade association representing the cable television industry in the United States. Its members¹ include cable operators serving more than 90% of the nation’s cable television subscribers, more than 200 cable program networks, and suppliers of equipment and providers of services to the cable industry.

NCTA’s program network members have invested literally billions of dollars to establish and promote some of the best-known and most trusted brands nationally and internationally in cable programming and broadband content. Moreover, the cable operator members of NCTA are the nation’s largest providers of high-speed Internet access. From 1996 to 2013, the cable industry invested over \$210 billion in building out advanced hybrid fiber-coaxial cable (HFC) networks and other infrastructure.

Comments

As a general matter, NCTA supports the recognition of <.Brand> TLDs as a separate type of new gTLD. Trademarks serve two purposes. First, they protect the ability of consumers to distinguish among competing goods and services and to avoid deception and confusion. Second, they secure to the owner of the mark the goodwill of his business. The proposed <.Brand> TLDs will simultaneously serve both purposes. Consumers who interact with a <.Brand> TLD website or domain name will be assured that they are dealing with the owner of the corresponding brand. In addition, <.Brand> TLDs will provide trademark owners with greater security and control over the use of their brands.

¹ Most of NCTA’s members are trademark owners. In addition, some of NCTA’s members have applied to operate a new gTLD registry that may qualify as a <.Brand> TLD.

With regard to the specific provisions of the proposal, there is no defined procedure by which a new gTLD Registry Operator can seek recognition as a <.Brand> TLD. NCTA suggests that Section 1 of Specification 13 be amended to include language such as:

In the event that a Registry Operator requests that its TLD be deemed to be a <.Brand> TLD, ICANN shall grant such request if Registry Operator demonstrates to ICANN's reasonable satisfaction that the TLD meets the requirements of Section 5.1 of this Specification 13. Within 30 days of the request, ICANN shall provide the Registry Operator with written notice of its determination.

This standard for granting the request is consistent with the standard set forth regarding a Registry Operator's effort to convince ICANN to revoke its determination that its TLD no longer qualifies as a <.Brand> TLD. (Specification 13, p. 1, second paragraph, clause (i).) NCTA also suggests that, in the event that a request or application for classification as a <.Brand> TLD is rejected, ICANN should either make Article 5 ("Dispute Resolution") of the Registry Agreement applicable to the determination or create an alternative procedure by which reconsideration can be requested.

Additionally, NCTA notes the discrepancy between Section 5.1(i)b and Section 5.1(i)f of the proposal. The former provides that, in order to qualify as a <.Brand> TLD, the trademark corresponding to the .Brand must be owned and used by the Registry Operator or its Affiliate. The latter provides that the trademark corresponding to the .Brand must be used by the Registry Operator in the conduct of one or more of its businesses that are unrelated to providing TLD Registry Services. Many trademarks, however, are owned by a trademark holding company, which does not engage in any business other than to license the marks to its operating subsidiaries. Thus, in that situation, if the owner of the mark is the Registry Operator, it will not be able to meet this requirement. The language should be amended to allow either the Registry Operator or an Affiliate of the Registry Operator to be the entity that uses the trademark corresponding to the .Brand in the conduct of one or more businesses other than providing TLD Registry Services.

Further, currently, in order to be recognized as a <.Brand> TLD, among other requirements, the TLD string must be identical to a registered trademark of the Registry Operator or its Affiliate. NCTA agrees with the comments already submitted that the definition is narrow enough to capture only what is commonly recognized as a corporate brand. In some cases, however, the definition is too narrow to allow a TLD that would commonly be recognized as a corporate brand to be considered a <.Brand> TLD. For example, any applicant with a two-letter mark was precluded from seeking to operate a registry where the TLD string was identical to its mark and may have filed for a TLD string that incorporates a generic term. Moreover, in some countries, including the United States, trademark owners need not register a mark in order to have protection for the mark. Therefore, NCTA believes that ICANN should specifically retain the discretion to consider evidence other than just a trademark registration in order to conclude that a

particular TLD should be considered a <.Brand> TLD. This approach will further ICANN's goals in allowing recognition of <.Brand> TLDs, but will not open the category to TLD strings that should not be considered as a <.Brand> TLD.

Finally, NCTA agrees with the comments that have been submitted, suggesting that the Sunrise Period for <.Brand> TLDs be delayed until such time, if ever, that registration of second level domains is open to the public. As a practical matter, the effort and expense associated with a Sunrise Period is unnecessary when the registry is open only to the Registry Operator, its Affiliates and its Licensees. Moreover, it is only when the registry is open to the public that a Sunrise Period would be necessary and meaningful, but the current proposal does not require a Sunrise Period at that time. For similar reasons, there is no need to require that the Registry Operator allow every registrar to provide registrar services and NCTA agrees with those who have supported the ability of a <.Brand> TLD operator to limit its registrar use to one or more preferred ICANN-accredited registrars.

NCTA appreciates the opportunity to submit these comments and ICANN's consideration of its views.

Respectfully submitted,

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