Single Registrant Exception

As highlighted above, the VI Working Group discussed several specific exceptions to prohibitions on vertical integration and cross-ownership. One such proposed exception is for single-registrant registries, which were divided into single-user (SRSU) and multiple-user (SRMU) subcategories. Under both the proposed SRSU and SRMU exceptions, there is only one registrant of second-level names - the registry itself. Under the proposed SRSU exception, the only user of the second-level names is the registry itself; under the proposed SRMU exception, users of the second-level names are both the registry itself and third-parties with specifically defined relationships to the registry. Although both SRSU and SRMU were initially discussed by the VI WG, the group as a whole spent most of the time on the Single Registrant Exception focusing on the SRSU and for this reason will refer only to the SRSU in the main body of this report.

Types of Registries Eligible for SRSU and SRMU Exceptions. As discussed further below, several types of SRSUs were proposed by constituencies, stakeholder groups and individual WG members. For example, the Intellectual Property Constituency (IPC) proposed an SRSU exception for a registry for which the gTLD string is an identical match to the registry’s trademark/service mark (a “.brand” registry) and that satisfied additional criteria intended to limit the applicability of the exceptions and to discourage abuse and gaming of the exceptions.[[1]](#footnote-3) Several WG participants proposed an SRSU exception for non-governmental organization registries (NGOs) (referred to as .ngo registry) in case where a specific membership organization could be identified and the string corresponded to the NGO’s name and also proposed an SRSU exception for cultural, linguistic or non profit organizations. And still others presented a case for an SRSU exception to apply to any entity, that could meet the basic requirements where the only user of the second-level names is the registry itself (regardless of whether being a trademark owner or non-governmental entity). **[Milton & Avri: Any other criteria, requirements or descriptive text?]**

According to proponents of the SRSU exception, the principle rationale of the SRSU exception is to facilitate the participation in the introduction of new gTLDs by entities whose participation could be impaired if prohibitions on vertical integration or cross ownership applied. The SRSU structureis anticipated to preclude the harms attributed to vertical integration and cross ownership for these types of entities. The registry controls the use of all second-level names in the SRSU structures, and cannot transfer second level names to third-parties under either structure independent of any transfer or sale of the TLD itself.

[IPC-proposed .brand Models. The IPC proposed three models of .brand exceptions:

* .brand SRSU - .brand TLD where the trademark owner is the Registered Name Holder (“RNH”) and user of all second-level names in the TLD. No second-level names are registered or delegated to any third party with the exception of wholly owned subsidiaries and otherwise affiliated companies. For example, a direct-to-consumer retailer that owned the trademark BUY STUFF would be the registry, sole RNHegistered Name Holder, and sole user of second level domain names, e.g. <locations.buystuff> <clothes.buystuff> or <housewares.buystuff>.
* .brand SRMU - .brand TLD where the trademark owner is the Registered Name Holder of all second-level domains but licenses those second- level domains to third parties that have a relationship with the brand owner (e.g., customers, suppliers, authorized dealers, etc.) whereby the registration agreement is part and parcel of and ancillary to a primary agreement for goods or services.
* .brand trademark-licensed MRMU - .brand TLD where the trademark owner and its trademark licensees are the Registered Name Holders and users of all second- level domains in the TLD. An example of this sort of exception would be trademark owners that operate a franchise system (<.fastburger>) or utilize distributors. Using the Fast Burger example, Fast Burger would be the registry and a Registered Name Holder (e.g. <headquarters.fastburger> or <humanresources.fastburger>), and could allow third parties operating under a trademark license to be Registered Name Holders (e.g. <Chicago.fastburger> or <BobSmith.fastburger>).

The IPC proposed 7 additional criteria intended to narrow the scope of the exceptions and to discourage abuse and gaming of them.[[2]](#footnote-4) With regard to the equal access and non-discrimination requirements for registrars, the IPC proposed that a new gTLD registry that satisfied the criteria of any of the three .brand models should (a) be allowed to control an ICANN-accredited registrar solely for the purpose of sponsoring registrations in that gTLD; (b) not be required to use an ICANN-accredited registrar for registration of second-level domain names within the gTLD; or (c) be permitted to enter into exclusive arrangements with one or a limited number of ICANN-accredited registrars for the purpose of sponsoring registrations in that gTLD. ]

1. See Annex D at pages \_\_- \_\_\_\_ for the IPC’s Constituency Statement. The IPC Constituency Statement also contains an SRMU exception. [↑](#footnote-ref-3)
2. These criteria are: (1) The trademark to which the .brand is an identical match must be the subject of trademark registrations of national effect in at least three countries in each of at least three of the five ICANN regions; (2) For first-round applicants, the registrations of national effect referenced in (1) must have issued on before June 27, 2008; (3) the .brand exemption is inapplicable to trademark owners whose principal business is the operation of a domain name registry, domain name registrar, or domain name reseller; (4) the relationship between the .brand TLD and its customer/Registered Name Holder is defined by terms of service that encompasses a registration agreement and governs content, the bundling of services or the purchase of a product; membership in an organization or cooperative; maintenance of the terms of a contract, trademark license; or an appropriate combination of these factors; (5) second-level .brand domain name registrations in the SRMU and MRMU models are held in trust by the TLD operator and are not delegated to a third-party user; (6) second-level .brand domain name registrations in the MRMU model are delegated to the user, but under the quality control provisions of a trademark license agreement that allows the registry to terminate the registration at will; and (7) mixed use gTLDs, where some names are held by the registry and other names registered to external parties are not exempt from cross-ownership or vertical integration restrictions. [↑](#footnote-ref-4)