

Bloomberg IP Holdings LLC

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Internet Corporation for Assigned Names and Numbers

Re: **Public Comment Period: 31 May - 20 July 2016**
 Notice of Proposed Amendment of New gTLD Registry Agreement

Bloomberg IP Holding LLC (“BIP”) submits the following comments on the notice of proposed amendment of Section 7.5(f) (the “Proposal”) of the New gTLD Registry Agreement (the “RA”):

1. **The Proposal**

The RA provides:

Registry Operator may assign this Agreement without the consent of ICANN directly to a wholly owned subsidiary of Registry Operator, or, if Registry Operator is a wholly owned subsidiary, to its direct parent or to another wholly owned subsidiary of its direct parent, upon such subsidiary or parent’s, as applicable, express assumption of the terms and conditions of this Agreement.

The Proposal would replace the quoted language with:

Registry Operator may assign this Agreement without the consent of ICANN directly to an Affiliated Assignee, as that term is defined herein below, upon such Affiliated Assignee’s express written assumption of the terms and conditions of this Agreement.

* * *

For the purposes of this Section 7.5(f), (A) “Affiliated Assignee” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (B) “control” (including the terms “controlled by” and “under common control with”) shall have the same meaning specified in Section 2.9(c) of this Agreement.

Section 2.9(c) of the RA provides, in relevant part:

(ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause

the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2. **Rationale for the Proposal**

The Proposal is consistent with the general exception to the consent requirement for the assignment of contracts. For example, under the United States Uniform Commercial Code, unless the parties otherwise agree, all rights of a seller and buyer under a contract can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on it by his contract, or impair materially its chance of obtaining return performance. UCC § 2-210. Delegation of Performance; Assignment of Rights.

Similarly, the Restatement of Contracts provides that a contractual right can be assigned unless (a) the substitution of a right of the assignee for the right of the assignor would materially change the duty of the obligor, or materially increase the burden or risk imposed on it by his contract, or materially impair its chance of obtaining return performance, or materially reduce its value to it, or (b) the assignment is forbidden by statute or is otherwise inoperative on grounds of public policy, or (c) assignment is validly precluded by contract. Restatement (Second) of Contracts: § 317(2).

BIP supports the proposed amendment to Section 7.5(f), in part, because it would replace ICANN's opaque analysis of proposed assignments with the general contract standard. BIP maintains that permitting an operator to assign its registry without ICANN consent to an affiliate that assumes in writing the registry operator's obligations under the RA would not materially undermine the performance, materially increase the burden or risk imposed, or materially reduce the value of the RA to ICANN. To the contrary, such an assignment could in some cases improve the financial standing of the registry operator and thus benefit ICANN and domain name registrants.

Respectfully submitted,

Bloomberg IP Holdings LLC


