

BRG Comments on Proposed Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes

Date: 15 August 2016

Deadline: 17 August 2016

Executive Summary

The Brand Registry Group (BRG) welcomes the opportunity to comment on the Proposed Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes.

Overall, the BRG supports the proposal in so far as it is workable for Specification 13 Brand TLDs, with obligations that are not overly onerous to implement. We do, however, have reservations with regards to the language used under the 'post registration complaint' requirement, which should be addressed, as well as broader concerns with the process adopted by ICANN Staff and the potential consequences of introducing an 'Exclusive Availability Pre-Registration Period'.

Subject to minor changes to the 'post registration complaint' requirement, the BRG recommends that ICANN proceeds to adopt this proposal for Specification 13 Brand TLDs without delay. Additional broader issues outlined in the comments below should also be considered but not cause delay for Brand TLDs implementing the proposed measures.

About the BRG

The Brand Registry Group (BRG) is an independent membership organisation of owners of a top level domain name that matches their existing brand. The BRG is registered by Royal Decree as an international not-for-profit under Belgian law. The group represents the common interests of members and offers selected services paid for from fees.

BRG Comments

The Brand Registry Group (BRG) welcomes the opportunity to comment on the Proposed Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes.

The proposal put forward by ICANN Staff consists of a list of three measures: exclusive availability pre-registration period, registration policy and post-registration complaint investigation.

Specifically, under this proposal, we note that Specification 13 Brand TLDs would be:

- i. [Exempt from providing the 'Exclusive Availability Pre-Registration Period'](#).

The BRG agrees that Specification 13 Brand TLDs should not be required to provide an Exclusive Availability Pre-Registration Period. This is sensible and straightforward, based on the fact that the Registry Operator clearly publishes a closed registration policy that requires all domain names in the TLD be registered, renewed and used only by the Registry Operator, its Affiliates and its Trademark Licensees. Compliance with the policy clearly designates to the public that all second-level domains in the TLD are not related to any government entities or

country code operators, thereby avoiding any confusion. These facts have been repeated regularly in order to reach agreement for a streamlined process for Brand TLDs.

- ii. Required to add a provision to their registration policy to state that the registrant will take steps to ensure against misrepresentation or falsely implying that the registrant or its business is affiliated with a government or country-code manager.

The BRG considers this requirement (ii) to be acceptable.

- iii. Required to take steps, in response to a post-registration complaint, according to the requirements for handling reports pertaining to illegal conduct as set forth in section 2.8 of the Registry Agreement.

The BRG is concerned with the language used in this requirement (iii), whereby a 'post-registration complaint' has been tied back to the existing provision 2.8¹ validates a presumption that any confusion is on its face illegal or a violation of the rights of third parties. As neither of these presumptions have been established as fact, it would be more suited to state the required steps for response as a standalone rather than tie this awkwardly back to section 2.8, which deals with other matters.

More broadly, the BRG is also concerned with the overall process adopted by ICANN Staff in reaching this position, and the potential consequences of introducing an 'Exclusive Availability Pre-Registration Period'.

Regarding the overall process, the BRG is concerned with the process that has been adopted by ICANN Staff to reach this stage. In an attempt to avoid imposing a solution, ICANN Staff asked Registry Operators (ROs) to submit avoidance measures so that ICANN Staff would aggregate and circulate to the community for comment and determine which measures could be effective. Despite the high volume of submissions received, ICANN Staff proposed just a single solution, disregarding many other options put forward by Registry Operators. This has the appearance of a staff-imposed policy change, therefore. Furthermore, since a simplified 'one-size-fits-all' solution has now effectively been unilaterally proposed, ICANN could have reached this point over a year ago, saving on scarce resource and frustration all round.

There is also a concern that this proposal creates a tacit presumption for governments to have prior rights that could extend further in the future, potentially even impacting 3 letter codes and/or geographic names (many of which are brands) at both the second and top level.

Subject to minor changes to the 'post registration complaint' requirement, the BRG recommends that ICANN proceeds to adopt this proposal for Specification 13 Brand TLDs without delay. The broader issues outlined in our comments should also be considered but not cause delay for Brand TLDs implementing the proposed measures.

¹2.8 **Protection of Legal Rights of Third Parties.** Registry Operator must specify, and comply with, the processes and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth Specification 7 attached hereto ("Specification 7"). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.