

Position Paper:

Comments on the revised TLD Registry Agreement

Executive summary

The Brand Registry Group – *in formation* (BRG) makes the following requests in this paper:

- a) Extend the deadline for comments until 31 March 2013
 - b) Create a type 2 Brand Registry Agreement template
 - c) Establish direct BRG – ICANN dialogue on the detail required to create a Brand Registry Agreement template.
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Preliminary Comments

These comments are preliminary. The Brand Registry Group – *in formation* requests a delay of 30 days ending 31 March 2013 to the deadline for this comment period.

Need for a type 2 Brand Registry Agreement

The proposed Registry Agreement (RA) was written based on the historical experience that top-level domains (TLDs) were of the .com model, sold via Registrars at the second-level to millions of Registrants. This model is unfit-for-purpose for around 637 or 33% of the applications received as these applications are for future top-level domain registry operators:

- who are the *owners* of a company or brand that forms their applied for TLD
- whose TLD represents an identical pre-existing registered *trademark*
- whose TLDs are in furtherance of their *pre-TLD* operations business interests
- whose main business area is *outside* the domain name industry
- whose TLD will be *single entity, single user*, and who do not intend to sell second-level domain names to the general public.

This one third of applicants requires a radically different Registry Agreement. To avoid ICANN being involved in 637 negotiations on fundamental aspects of the RA, ICANN should create a second template RA specifically for Brand Registries. This would ensure that the starting point for any final negotiation is sound.

Specific Aspects where Brand Registries have different needs

- Compliance audits and economic studies conducted by ICANN on registry operators, and related confidentiality issues
- Transition of the TLD upon termination
- Arbitration
- Limitation of liability
- Indemnification
- Change of control
- Amendment procedure
- Applicable laws
- Registrant protection measures such as the letter of credit, Trademark Clearing House, Uniform Rapid Suspension, Sunrise, IP Claims and UDRP
- Use of registrars
- Public Interest Commitments.

The BRG would, in addition, be pleased to engage in discussions with ICANN on details of the above and other aspects of the RA that are unsuitable for Brand Registries.

About Us

In ICANN's 2012/13 TLD application round there were 1930 applications of which 637 or 33% were submitted by brand owners for a string which matched their brand, a product or service. A sub-set of these applicants share a unique set of needs as future Registries. The Brand Registry Group - *in formation* has been established by applicants to represent these needs. It will be an independent membership organisation. It will seek to represent the members' common interests and will be run by professionals, paid for from membership fees.

This position paper is submitted on behalf of the founding member companies that includes Gucci, HSBC, KPMG International, Microsoft, Richemont, and Yahoo!