

.Brand Registry Agreement Addendum Published for Public Comment

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On December 6, 2013, ICANN posted for public comment a proposal requested by the Brand Registry Group to incorporate a new Specification 13 to the new gTLD Registry Agreement, which would be available to a registry operator that operates a top-level domain (TLD) that ICANN determines qualifies as a ".brand TLD." Specification 13, otherwise known as the ".brand Addendum," would be added to the standard Registry Agreement that was finalized and approved by the ICANN Board of Directors in July 2013.

The proposed Specification 13 is the result of months of negotiation between the Brand Registry Group—for which Katten's Internet group served as special advisor—and ICANN counsel. The purpose of Specification 13 is to amend the Registry Agreement to reflect the unique business model of a closed, .brand registry. Essentially, the proposed changes will allow trademark owners who have applied for new TLDs that consist of their brand to operate their TLD with some flexibility, while allowing them to use trusted service partners and avoid the confusion that would be caused by the immediate re-delegation of their branded TLD to a third party.

Specifically, the most important features of Specification 13 are that it would:

- Define a .brand in a way so that the brand owner or its affiliate does not have to exclusively use domain names in the registry, and instead allow that the registry operator can still qualify as a .brand even if it merely controls the domain name system (DNS) records of the domain names. This should give .brand owners greater flexibility in how their domain names are used, such as, for example, by third-party business partners or customers. Under the current exemption of the Registry Operator Code of Conduct, registry operators and their affiliates are required to exclusively register and use all of the domain names in the TLD.
- Amend Section 2.9 of the Registry Agreement to allow .brands to use a single trusted registrar(s). The current version of the Registry Agreement would require brand owners to offer access to all accredited registrars, thus causing security concerns.
- Amend Section 4.5 of the Registry Agreement to provide .brand registry operators with an option to object to the re-delegation of the .brand TLD following the termination or expiry of the Registry Agreement during a two-year "cooling off" period. This would allow the .brand to

avoid the risk of consumer confusion or any other unintended collisions consequences after the winding down of the registry. This cooling off period would not, however, prohibit a third party from making an application for the TLD in a future TLD application round.

- Amend Specification 9 of the Registry Agreement to allow a .brand to obtain a Code of Conduct exemption if it met the .brand definition, and would recognize that .brands are by their nature in the public interest.

As you can see, Specification 13, if approved by the ICANN Board of Directors, would result in important improvements to the Registry Agreement and provide .brand registries with more flexibility in how they use their TLD, while also increasing security for their brand by allowing them to use trusted partners and avoid the use of their brand by third parties if they wind down their registry. Importantly, Specification 13 will also not prevent .brand applicants from negotiating over additional provisions.

ICANN has published the draft Specification 13 for public comment until January 9, 2014, with a reply period ending January 31, 2014. ICANN staff will review comments submitted by the community and will provide a summary and analysis of these comments to ICANN management and the New gTLD Program Committee of ICANN's Board of Directors. ICANN management and the committee will review the feedback as well as the additional research and analysis directed to inform its consideration of the proposal. Brand owners that have applied for their brands as TLDs, or brand owners that are considering applying for their brand as a TLD in later TLD applicant rounds, are thus highly encouraged to submit public comments in support of Specification 13.

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