

## FAQ Specification 13 and the registrar clause

April 2014

### **Background**

At ICANN49 Singapore the ICANN Board, through the New gTLD Programme Committee (NGPC), passed a resolution recognising that the .brand registry model was different, with the creation of Spec 13 to the Registry Agreement (RA). Now any registry meeting the definition of a .brand within Spec 13 has some common sense changes to the standard RA.

### **Why was Spec 13 needed?**

The standard RA was created based on GNSO policy work stretching back to 2007, pre-dating the acceptance of Vertical Integration (between registries and registrars), and assumed an open generic registry model. But .brands are a different model; they do not intend to sell names to third parties.

### **Why is the GNSO being asked for comment after ICANN49 Singapore?**

The NGPC was keen to recognise the appropriate role of the GNSO and to re-assure the GNSO it was not attempting to create new policy. It believed one Spec 13 article touched on GNSO policy.

### **Which GNSO policy is being referred to here?**

Recommendation 19 of the GNSO Final Report on the Introduction of New Generic Top-Level Domains of August 8, 2007 – “Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.”

### **What is the precise part of Spec 13 that .brands want?**

This is the text adopted by the NGPC subject to 45 days notice for GNSO comment:

*"Registry Operator must either (i) provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD, or (ii) designate no more than three ICANN accredited registrars at any point in time to serve as the exclusive registrar(s) for the TLD".*

### **Why is the ability to use an exclusive registrar important to .brands?**

Trust and confidence. Dot brands are a reflection of the brand on which they are based and therefore the values of the underlying company. They are building, for the first time, secure Internet platforms over which they will have full control. Part of that control is to contract with up to three ICANN accredited registrars (to cover live registrar, contingency registrar and transitioning between registrars) who are contracted, trusted suppliers who will be a partner in creating robust security or other relevant controls. Anything less, would potentially undermine the rationale for the .brand application.

### **Are there examples of un-trusted registrars?**

Yes, there have been legal cases on just this issue eg Transamerica. v. Moniker, 672 F.Supp.2d 1353 (S.D. Fla. 2009) and Microsoft v. Shah, et al., C10-0653 (W.D. Wash. 2011) in which certain registrars were found liable for contributory infringement involving domain names.

### **Are there other reasons for exclusive registrars other than the trust issue?**

Yes, .brands will have strict vendor screening policies and it is impractical to screen all ICANN accredited registrars.

Also, since there are no names to be sold, so there is no business opportunity that is lost. Most .brand domains will simply use a registrar as a service provider to populate their own .brand domain based on an agreed contract.

**Spec 13 went through a Public Comment period. Was the registrar issue raised then?**

Yes, within one of the 39 comments received. It was in the form of a letter signed by 11 registrars but that letter was written primarily to make a separate point relating to the .brand definition – a comment accepted by the BRG and ICANN staff and now acted upon.

**The BRG spoke to registrars in Singapore. What was the outcome?**

The same 11 registrars wrote formally to ICANN during the ICANN49 Singapore meeting retracting their objections to this specific provision.

**Why weren't .brand domains foreseen by the GNSO in 2007?**

In 2007, and in earlier years and later, there was much discussion of .brand domains but that discussion did not make it to the GNSO final report which then led to the ICANN Application Guidebook.

**What were those .brand discussions?**

The Recommendation 19 discussion (recorded in the GNSO Final Report) specifically mentions that the registrar non-discrimination requirement was not appropriate for all TLD models:

*"the RyC has no problem with this recommendation for larger gTLDs; the requirement to use accredited registrars has worked well for them. But it has not always worked as well for very small, specialized gTLDs. The possible impact on the latter is that they can be at the mercy of registrars for whom there is no good business reason to devote resources. In the New gTLD PDP, it was noted that this requirement would be less of a problem if the impacted registry would become a registrar for its own TLD, with appropriate controls in place. The RyC agrees with this line of reasoning but current registry agreements forbid registries from doing this. Dialog with [Registrars] on this topic was initiated and is ongoing, the goal being to mutually agree on terms that could be presented for consideration and might provide a workable solution."*

Together with the following discussion that relates directly to the existing open-commercial registry models:

*"There is a long history associated with the separation of registry and registrar operations for top-level domains. The structural separation of Verisign's registry operations from Network Solutions registrar operations explains much of the ongoing policy to require the use of ICANN accredited registrars"*

**ICANN also used consultants at that time. Did they mention the .brand model?**

Yes. The CRAI Report 2008.

*"A single owner TLD would be a new model where the registry and registrants are one. An example would be a large company interested in having its own TLD for use by its employees. For this business model, a requirement that registry and registrar functions be separated would be especially inefficient. Why require a .BIGCO, as an example, to go through a third party to register its employees as users? In addition to the inefficiency of such a structure, there could also be security concerns, especially if equal access requirements were also in force. What if a rival to the single owner obtained ICANN accreditation as a registrar? The existing vertical separation and equal access requirements are particularly inappropriate for this potential new business model. Without suspending those requirements, it seems unlikely there will be many if any candidates for such TLDs."*

**Did the GNSO back in 2007 recognise that things may be changing?**

Yes. GNSO Implementation Guideline J says:

*"The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place."*

The fact that one-third of all applications are from .brand domains is the very definition of a changing market place.

## 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. It represents members' common interests and offers services paid for from fees.