TITLE:	**New gTLD Registry Agreement – Specification 13**
PROPOSED ACTION:	**For Resolution**

EXECUTIVE SUMMARY:

The NGPC is being asked to consider a proposal to incorporate a new ".Brand" Specification 13 for the New gTLD Registry Agreement. If approved by the NGPC, Specification 13 would provide limited accommodations to registry operators of TLDs that qualify as ".Brand TLDs," as that term is defined in the proposed Specification 13. As many as one-third of all new gTLD applications potentially qualify as .Brand TLDs. The new Specification 13 is the result of several months of negotiations, formal community feedback (most recently during a public comment forum initiated on 6 December 2013), and meetings with various stakeholders and communities.

Separately, the NGPC is being asked to approve an additional clause to be included in Specification 13 to allow a .Brand registry operator to designate a limited number preferred registrars for the TLD. Implementation of the NGPC's approval of this additional clause will be pending some time for the GNSO to review this additional provision and advise ICANN as to whether it is inconsistent with specific policy recommendations on new gTLDs or with the intent of those recommendations.

The Brand Registry Group first engaged with ICANN regarding modifications to the New gTLD Registry Agreement to address concerns of their constituents at ICANN's Beijing Conference in April 2013. Following the Beijing meeting, numerous discussions were held telephonically leading up to both ICANN's Durban and Buenos Aires meetings. Following discussions at ICANN's Buenos Aires meeting, ICANN staff and the Brand Registry Group agreed that posting a draft of Specification 13 would be helpful to facilitate community input and discussion. If Specification 13 is adopted, and the Registry Operator meets the final published eligibility criteria for a ".Brand TLD," ICANN would consider and afford the Registry Operator the opportunity to incorporate the provisions of the proposed Specification 13 into its registry agreement (whether at the

time of execution or by amendment if a registry agreement has already been executed). The accommodations proposed in the revised version of Specification 13 Base Agreement are as follows:

- *Exemption from the Specification 9 of the Registry Agreement.* Specification 9, also referred to as the Code of Conduct, is designed to protect the TLD's registrants, but in the case of a .Brand the .Brand operator has incentives to protect its registrants, who will all be its own its affiliates and trademark licensees

- *Deferral of Sunrise requirements.* A .Brand TLD's requirement to conduct a Sunrise registration period would be deferred for as long as the TLD continues to qualify as a .Brand TLD. If the TLD ever ceases to operate as a .Brand TLD, then the TLD would have to comply with the Sunrise requirements and hold a Sunrise period within 60 days.

- A 2-year "cooling-off" period prior to re-delegation of the .Brand TLD to a successor registry operator, in most cases. The provision does not prevent ICANN's appointment of an EBERO.

- Registry Operator must conduct an annual self-audit and certify that the TLD continues to qualify as a .Brand TLD.

- Revised definitions of ".Brand TLD" and "Trademark Licensee" to address concerns and adopt several suggestions of the commentators.

- Removal of the ability of the .Brand registry operator to designate exclusive registrars for the TLD.

STAFF RECOMMENDATION:

Staff recommends the NGPC approve Specification 13 for the New gTLD Registry Agreement as presented in Annex 1 of the Resolution.

Staff recommends that the NGPC approve an additional clause to be included in Specification 13 to allow a .Brand registry operator to designate a limited number of

preferred registrars for the TLD, pending some time for the GNSO to review this additional provision and advise ICANN as to whether it believes that this additional provision is inconsistent with specific policy recommendations on new gTLDs or with the intent of those recommendations.

PROPOSED RESOLUTION:

Resolution text superseded by NGPC Resolutions 2014.03.26.NG01 - 2014.03.26.NG02: http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26mar14-en.htm

Resolution text superseded by NGPC Resolutions 2014.03.26.NG01 - 2014.03.26.NG02: http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26mar14-en.htm

Resolution text superseded by NGPC Resolutions 2014.03.26.NG01 - 2014.03.26.NG02: http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26mar14-en.htm

PROPOSED RATIONALE:

Rationale text superseded by Rationale to NGPC Resolutions 2014.03.26.NG01 - 2014.03.26.NG02: http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26mar14-en.htm#1.a.rationale

Rationale text superseded by Rationale to NGPC Resolutions 2014.03.26.NG01 - 2014.03.26.NG02: http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26mar14-en.htm#1.a.rationale

Rationale text superseded by Rationale to NGPC Resolutions 2014.03.26.NG01 - 2014.03.26.NG02: http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26mar14-en.htm#1.a.rationale

Rationale text superseded by Rationale to NGPC Resolutions 2014.03.26.NG01 - 2014.03.26.NG02: http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26mar14-en.htm#1.a.rationale

Signature Block:

Submitted by: Cyrus Namazi

Position: Vice President, DNS Industry Engagement

Date Noted: 26 March 2014

Email: cyrus.namazi@icann.org

SPECIFICATION 13

.BRAND TLD PROVISIONS

On or prior to the date of the Agreement, ICANN has qualified the TLD as a .Brand TLD (as defined below). The provisions of this Specification 13 shall apply as of the Effective Date of the Agreement, and shall continue to apply for so long as the TLD meets the requirements of the definition of a .Brand TLD.

If at any time ICANN determines, in its reasonable discretion, that the TLD no longer qualifies as a .Brand TLD, ICANN will provide Registry Operator with written notice of its determination. Registry Operator will have 30 calendar days following the date of delivery of such notice to either (i) meet the requirements of the .Brand TLD definition to ICANN's reasonable satisfaction, in which case the provisions of this Specification 13 shall continue to apply, or (ii) initiate the dispute resolution proceedings set forth in Article 5 of the Agreement during such 30 calendar day period disputing ICANN's determination (a "Dispute Proceeding"). If upon expiration of such 30 calendar day period, Registry Operator fails to meet the requirements of the .Brand TLD definition to ICANN's reasonable satisfaction and has not initiated a Dispute Proceeding pursuant to Article 5 of the Agreement, (i) the TLD shall immediately cease to be a .Brand TLD, (ii) Registry Operator shall immediately comply with the provisions of the Agreement as no longer modified by this Specification 13 (other than Section 2 hereof) and (iii) the provisions of this Specification 13 (other than Section 2 hereof) shall thereafter no longer have any effect.

If Registry Operator initiates a Dispute Proceeding, there will be no change in the status of the TLD as a .Brand TLD in accordance with this Specification 13 during the pendency of such Dispute Proceeding, so long as Registry Operator otherwise continues to operate the TLD in compliance with the requirements of the definition of a .Brand TLD and this Specification 13, other than with respect to the disputed issue(s). If, following mediation pursuant to Section 5.1 of the Agreement, ICANN and Registry Operator reach agreement resolving the Dispute Proceeding, the parties shall implement such agreement. If the dispute is not resolved through mediation, the Dispute Proceeding shall be resolved through a binding arbitration proceeding pursuant to Section 5.2 of the Agreement. If, upon conclusion of the arbitration proceeding, ICANN's determination is not fully overturned by the arbitrator, (i) the TLD shall on the date the arbitrator released his or her findings immediately cease to be a .Brand TLD, (ii) Registry Operator shall immediately comply with the provisions of the Agreement as no longer modified by this Specification 13 (other than Section 2 hereof) and (iii) the provisions of this Specification 13 (other than Section 2 hereof) shall thereafter no longer have any effect. If, upon conclusion of the arbitration proceeding, ICANN's determination is fully overturned by the arbitrator, then ICANN's determination shall have no effect and the TLD shall remain a .Brand TLD. However, any resolution of a Dispute Proceeding shall not limit or otherwise restrict ICANN's right to subsequently determine, in its reasonable discretion, that the TLD no longer qualifies as a .Brand TLD. The date on which, if any, this Specification 13 (other than Section 2 hereof) no longer has any effect is referred to as the "Disqualification Date."

In addition to the foregoing, the parties agree as follows:

1. Registry Operator is exempt from complying with the requirements of Specification 9 to the Agreement, notwithstanding the provisions of Section 6 of Specification 9.

2. Notwithstanding the requirements of Section 2.8 of the Agreement, Section 1 of Specification 7 to the Agreement and Section 2 of the Trademark Clearinghouse Rights Protection Mechanism Requirements (the "TMCH Requirements"), Registry Operator is not required to provide a Sunrise Period (as defined in the TMCH Requirements) or, except as set forth herein, otherwise comply with the obligations set forth in Section 2 of the TMCH Requirements (collectively, the "Sunrise Requirements") so long as the TLD continues to be qualified as a .Brand TLD by ICANN.

    Registry Operator must comply with all other provisions of the TMCH Requirements, including completing the Integration Testing required by Section 1 of the TMCH Requirements and providing the Claims Services required by Section 3 of the TMCH Requirements. Registry Operator will provide ICANN (i) confirmation of completion of Integration Testing and (ii) notice of the start date (the "Claims Commencement Date") and end date for the Claims Period (as defined in the TMCH Requirements) for the TLD, in each case via the customer services portal at http://myicann.secure.force.com/. Registry Operator may not Allocate (as defined in the TMCH Requirements) or register a domain name in the TLD (except for "NIC" and self-allocation or registration to itself of domain names pursuant to Section 3.2 of Specification 5) prior to the Claims Commencement Date.

    Registry Operator must comply with the Sunrise Requirements effective as of the Disqualification Date and commence a Sunrise Period within 60 calendar days of the Disqualification Date. If, at the Disqualification Date, the Trademark Clearinghouse or any successor or alternative trademark validation authority appointed by ICANN is not in operation, Registry Operator must implement the Sunrise Requirements through an alternative mechanism developed by Registry Operator that is reasonably acceptable to ICANN. As of the Disqualification Date, Registry Operator may not Allocate or register any additional domain names to third parties prior to the Allocation or registration of all Sunrise Period registrations except as permitted by Section 2.2.4 of the TMCH Requirements. In the event ICANN develops an alternative version of the TMCH Requirements specifically for .Brand TLDs or former .Brand TLDs, Registry Operator agrees to comply with such alternative requirements if such requirements are similar to the TMCH Requirements in effect as of the date hereof as modified by this Specification 13.

3. Section 4.5 of the Agreement is superseded by the following:

    Transition of Registry upon Termination of Agreement.

        (a)   Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of the Agreement pursuant to Section 4.3 or Section 4.4, Registry

Operator will provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that, subject to the terms of this Section 4.5, if the TLD is qualified as a .Brand TLD by ICANN in accordance with Specification 13 on the date that the Agreement expires or terminates (the "Expiration Date"), ICANN may not delegate the TLD to a successor registry operator for a period of two years following the Expiration Date without Registry Operator's consent (which shall not be unreasonably withheld, conditioned or delayed), unless ICANN reasonably determines that transitioning operation of the TLD is necessary to protect the public interest.

(b)   If ICANN determines, in its reasonable discretion, that transitioning operation of the TLD is necessary to protect the public interest, then ICANN will provide Registry Operator with written notice and a reasonably detailed explanation for its public interest determination. If, within 30 calendar days of receipt of such notice, Registry Operator initiates the dispute resolution proceedings as set forth in Article 5 of the Agreement disputing ICANN's determination, ICANN will not transition operation of the TLD to a successor registry operator during the pendency of such proceedings. If, following mediation pursuant to Section 5.1 of the Agreement, ICANN and Registry Operator reach agreement resolving the dispute, the parties shall implement such agreement. If the dispute is not resolved through mediation, the dispute shall be resolved through a binding arbitration proceeding pursuant to Section 5.2 of the Agreement. If, upon conclusion of the arbitration proceeding, ICANN's determination is not fully overturned by the arbitrator, ICANN may delegate and transition the operation of the TLD to a successor registry operator on or following the date the arbitrator released his or her findings. If, upon conclusion of the arbitration proceeding, ICANN's determination is fully overturned by the arbitrator, then ICANN may not delegate or transition the operation of the TLD based on ICANN's determination that the such delegation and transition is necessary to protect the public interest.

(c)   For the avoidance of doubt, an Emergency Operator will not be considered a successor registry operator for purposes of this Section 4.5. In addition, this Section 4.5 shall not prohibit ICANN from accepting applications for or delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations

Instrument for the maintenance and operation of the TLD, regardless of the reason for termination or expiration of the Agreement.

4. Registry Operator agrees to conduct internal reviews at least once per calendar year to ensure that the TLD meets the requirements of the definition of a .Brand TLD. Within 20 calendar days following the end of each calendar year, Registry Operator will provide ICANN with the results of its internal review(s), along with a certification executed by one of its executive officers certifying that the TLD meets the requirements of the definition of a .Brand TLD. These materials will be submitted to ICANN by via email at [_____@icann.org]. Registry Operator agrees that ICANN may publicly post the results of Registry Operator's review and certification, but ICANN will keep confidential and not publish any information that is, and Registry Operator has marked as, Confidential Information, other than in compliance with Section 7.15 of the Agreement. ICANN may specify in the future the form and content of these reports or inform Registry Operator that the reports be delivered by other reasonable means.

5. Registry Operator must promptly notify ICANN in writing of any change to the TLD that could cause the TLD to fail to meet the requirements of the definition of a .Brand TLD. In addition, Registry Operator agrees to provide ICANN with any amendment or modification to the registration policies for the TLD that could potentially disqualify the TLD as a .Brand TLD.

6. For purposes of this Specification 13, the following terms shall have the following meanings:

    6.1   ".Brand TLDs" are TLDs where:

        (i)   the TLD string is identical to the textual elements protectable under applicable law, of a registered trademark valid under applicable law, which registered trademark:

            a.   is recorded with, and issued a signed data mark file by, the Trademark Clearinghouse or any successor or alternative trademark validation authority appointed by ICANN, if such trademark meets the eligibility requirements of such validation authority (provided that Registry Operator is not required to maintain such recordation for more than one year);

            b.   is owned and used by the Registry Operator or its Affiliate in the ordinary course of Registry Operator's or its Affiliates' business in connection with the offering of any of the goods and/or services claimed in the trademark registration;

            c.   was issued to Registry Operator or its Affiliate prior to the filing of its TLD registry application with ICANN;

d. is used throughout the Term continuously in the ordinary course of business of Registry Operator or its Affiliate in connection with the offering of any of the goods and/or services identified in the trademark registration;

e. does not begin with a period or a dot; and

f. is used by Registry Operator or its Affiliate in the conduct of one or more of its businesses that are unrelated to the provision of TLD Registry Services; and

(ii) only Registry Operator, its Affiliates or Trademark Licensees are registrants of domain names in the TLD and control the DNS records associated with domain names at any level in the TLD;

(iii) the TLD is not a Generic String TLD (as defined in Specification 11); and

(iv) Registry Operator has provided ICANN with an accurate and complete copy of such trademark registration.

6.2 "Trademark Licensee" means any corporation, partnership, limited liability company or similar legal entity (and not a person) that has a written trademark license agreement with Registry Operator or its Affiliate, for use of the registered trademark owned by Registry Operator or its Affiliate, the textual elements of which correspond exactly to the .Brand TLD string operated by Registry Operator, where:

(i) such license is valid under applicable law;

(ii) such license is for the use of such trademark in the regular course of that entity's business outside of the provision of TLD Registry Services, and is not primarily for the purpose of enabling registration or use of domain names in the TLD;

(iii) such trademark is used continuously in that entity's business throughout the Term; and

(iv) the domain names in the TLD registered to the Trademark Licensee are required to be used for the promotion, support, distribution, sales or other services reasonably related to any of the goods and/or services identified in the trademark registration.

New gTLD Program Committee Members,

Attached below please find Notice of the following New gTLD Program Committee Meeting:

26 March 2014 – NGPC Meeting at 06:45 UTC (2:45pm – 3:15pm in Singapore). This Committee meeting is estimated to last 30 minutes.

http://www.timeanddate.com/worldclock/fixedtime.html?msg=New+gTLD+Program+Committee+Meeting&iso=20140326T1445&p1=236&am=30

Some other helpful time zones:

25 March 2014 – 11:45 p.m. PDT Los Angeles, CA
26 March 2014 – 2:45 a.m. EDT Washington, D.C.
26 March 2014 – 7:45 a.m. CET Brussels

Main Agenda:

1. Continuation of Discussion on Registry Agreement Specification 13 for Brand Category of Applicants – (T) for resolution

MATERIALS -- Once materials are available, you can find them here on BoardVantage.

If you have trouble with access, please let us know and we will work with you to assure that you can use the BoardVantage Portal for this meeting.

If call information is required, it will be distributed separately.

If you have any questions, or we can be of assistance to you, please let us know.

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