

Jonathan Robinson  
Chair GNSO Council  
By email [jrobinson@afilias.info](mailto:jrobinson@afilias.info)

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Dear Jonathan

I am writing to you on behalf of the Brand Registry Group (BRG) and other supporting “.brand” applicants, which account for over 600 (roughly one third) of New gTLD applicants (with another 250+ applied for by these brand owners as open/restricted-open TLDs). Please would you circulate this letter to the members of the GNSO Council, for their information in advance of the Council meeting on 8 May when the draft motion in response to the NGPC's letter with respect to Specification 13 will be discussed.

### **Process**

I understand that some Council members may be of the view that the BRG should have approached the GNSO a year or so ago to request a change of policy and that, had we done so, that policy development process would likely have been concluded by now. I would like to assure the Council that this was not a deliberate attempt by the BRG and its members to circumvent due process. A year ago the BRG was still in the process of forming. A small group of founder member companies had recognized that they shared a common interest in that they had unique plans to run registries in furtherance of a business purpose other than offering registry services to the general public, and that in doing so they would have specific concerns and requirements, including around issues of registry security, which could more sensibly be addressed collectively rather than each company seeking to negotiate the same points individually in hundreds of separate negotiations. Consequently, we were working at that time to establish the BRG and to reach out to other companies with aligned interests to invite them to join us.

It is also important to appreciate that the BRG's membership is made up of companies, and people within those companies, who are either entirely new to ICANN, or whose previous involvement has been in a very different capacity. Consequently the BRG members are only now coming to understand ICANN processes.

### **Expectations**

These are companies who are used to entering into business-significant contracts on terms which are properly tailored to the anticipated activity and where those terms are fully negotiable. Their expectation therefore, in the new gTLD application process, has been that where some of the standard Registry Agreement terms clearly did not fully anticipate and are irrelevant or inappropriate to the form of closed Brand registry they would be operating, then naturally those terms could be revised to make the contract fit for purpose.

Since the draft contract was provided by, and will be entered into with, ICANN the natural assumption amongst BRG members was that the process of agreeing sensible revisions to the terms should be conducted with the ICANN staff. At no point during the extensive negotiations did the ICANN staff direct that the BRG should instead approach the GNSO to request a policy change.

### **Public comment**

Further, the original wording for Specification 13, including the trusted registrar wording, was published for public comment and the overwhelming response was favourable, with no objection on grounds of improper process. Although 11 registrars did disagree with the proposal their objection was primarily on a separate point relating to the .brand definition, which has since been addressed. The same registrars withdrew their objections in Singapore.

### **Our request**

I would like to urge you on behalf of the BRG members and supporting “.brand” applicants to find a way to allow Brand registries to proceed to launch, with the certainty of ensuring that they can operate with robust security controls by limiting the registrar access to a small number of trusted partner(s). Please do not allow any perceived, and inadvertent, failure to follow process to stand in the way of progress in the development of innovative new registry models.

Yours sincerely

Martin Sutton  
President, Brand Registry Group