



9 May 2014

Mr Cherine Chalaby, Chair, ICANN Board NGPC

Dear Cherine,

Specification 13 to the Registry Agreement

I am writing to you on behalf of the GNSO Council and in response to your letter to the Council of 3 April 2014.

The Council appreciates the opportunity to provide the advice requested in your letter and has taken the opportunity to thoroughly consider and discuss the question and associated issues. We have discussed this both within the Council and more broadly within the GNSO groups represented by the Councillors.

Full records of the discussions and the detail of the issues raised therein are available to the NGPC, or other interested parties, through mail archives, meeting recordings and transcripts.

In any event, I am pleased to inform you that we have produced a timely outcome *i.e.* within the 45 days requested in your letter of 3 April 2014 and in the form of a motion vote on and passed at the GNSO Council meeting of 8 May 2014. The full text of the motion passed is available [here](#) and, for completeness, is also included as an appendix to this letter.

We look forward to continuing to work effectively with the NGPC and indeed the ICANN Board as a whole in future.

Should you require further clarification or input, please revert to me in my capacity as Chair of the GNSO Council.

Yours sincerely,

Jonathan Robinson
Chair, ICANN GNSO Council

Motion in response to the NGPC's letter with respect to Specification 13

WHEREAS:

1. the NGPC has adopted a proposed Specification 13 to the Registry Agreement to reflect requests by .BRAND TLDs whilst delaying the implementation of an additional clause contained therein, which will allow a Registry Operator to designate up to three exclusive Registrars ;
2. the NGPC has sent a letter to the GNSO Council Chair asking for advice as to whether the GNSO Council believes that this additional clause is inconsistent with the letter and intent of GNSO Policy Recommendation 19 on the Introduction of New Generic Top-level Domains;
3. the GNSO Council thanks the NGPC for referring the matter back to the GNSO Council;
4. the GNSO Council has discussed the matter including with the Brand Registry Group (BRG) and considered the background information provided by the BRG;
5. the GNSO Council has reached out to participants in the Policy Development Process at the time of developing the policy and the associated Board Report on the Introduction of New Generic Top-Level Domains (11 September 2007);
6. the Council acknowledges and understands the proposal made by .BRAND TLD operators.

It is now RESOLVED:

1. that the right to only use up to three exclusive registrars, as contained in Specification 13 is inconsistent with Recommendation 19 as (i) the language of this recommendation of the final report of the GNSO does not stipulate any exceptions from the requirements to treat registrars in a non-discriminatory fashion and (ii) the GNSO new gTLDs Committee discussed potential exceptions at the time, but did not include them in its recommendations, which is why the lack of an exception cannot be seen as an unintended omission, but a deliberate policy statement;
2. that the Council, notwithstanding resolved 1, does not object to the implementation of Specification 13 as a whole, including an additional clause which will allow a Registry Operator to designate up to three exclusive Registrars, given the specific circumstances and the fact that a public comment period on Specification 13 was conducted in 2013 without objections from the GNSO, save for that from certain registrars, which was subsequently withdrawn;
3. that the Council reserves the right to initiate a policy development process, potentially resulting in Consensus Policy affecting both existing and future TLDs, if and when the right granted to .BRAND TLDs is at risk of, or bears the risk of, being used for augmenting and / or circumventing the conditions of Specification 13 or any subsequent provisions;
4. that the Council's acceptance of a variation from original policy recommendation may not be taken as a precedent for any future decisions.