



The ICANN GNSO “Business Constituency”



Dr. Steve Crocker
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Dear Dr. Crocker,

Re: Release of 2-letter labels and country names for Specification 13 registries

We write today with a joint proposal of the Brand Registry Group (BRG), the Business Constituency (BC), and the Intellectual Property Constituency (IPC), on the matter of the release of country names and two-letter labels at the second level, as foreseen in Specification 5 of the Registry Agreement. In this letter we would like to seek assurances as to the manner in which applications for the release of country names and two-letter labels from Specification 13 .brand registries are handled within the Global Domains Division, and specifically as to the procedure where comment is received from the GAC or other government representatives.

We have addressed this letter to the ICANN Board as we disagree with the proposed way the GDD intends to proceed.

Why 2-letter labels and country names are vital for both .brands and countries

There is a clear public policy benefit to the release of country and territory names at the second level, as it encourages .BRAND TLD operators to create customized and relevant localized content for consumers in various countries and regions across the world, especially in developing nations with predominantly non-English-speaking populations. This practice will continue to fuel economic development in such regions, where e-commerce is increasingly a key engine for growth and jobs. It will also enhance one of the primary goals of the new gTLD program, which is to “foster diversity, encourage competition, and enhance the utility of the DNS.”

Additionally, the use of 2-letter labels and country names as second level domains in .BRAND TLDs is key to efficient navigation in the same way that they are both currently a feature of legacy brand websites at the third level (e.g. uk.brand.com, germany.brand.com). Their use enables brands to customize their web presence to the benefit of customers and consumers. Indeed, the BRG has developed voluntary guidelines for its members in an attempt to

standardise the navigation and create customer familiarity through the use of consistent and intuitive second-level domains. Specifically, these voluntary guidelines suggest the use of the short form country name at the second or third level and the use of the 2-letter label as a language indicator (i.e. as a directory). Examples: `switzerland.brand/fr`, `peru.brand/es`, `peru.sector.brand/es`. Some .brand registries will also wish to use the 2-letter labels at the second or third level to help consumers navigate to relevant, localised content, e.g. `uk.brand`.

Moreover, many brands are global and therefore business plans to roll out a .BRAND TLD are dependent on having the capability to segment by geographic location. Some .BRAND applicants are facing internal challenges from their business and marketing teams as these teams will not consider signing off on a .BRAND plan if they cannot consistently have the .BRAND variation of what they currently have (i.e. `de.brand` and `it.brand` as well as the current `brand.de` and `brand.it`). From the perspective of many .BRAND applicants, until this is satisfactorily resolved, it significantly reduces the incentive to launch, which may impact the success of the new gTLD program as well as .BRAND interest in a second round.

We note in Specification 5 that conditions for release of 2-letter labels and country names are different and, in light of ongoing developments, we would like to propose the following processes for Specification 13 registries.

Release of 2-letter labels for Specification 13 registries

Firstly, we propose that all applications for release of 2-letter labels from Specification 13 registries should be flagged as originating from a .BRAND.

Secondly, we propose that all applications for release of 2-letter labels from Specification 13 registries be treated under the second option within Specification 5 of the Registry Agreement, namely, that: ["The Registry Operator may also propose the release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN"](#).

Avoiding confusion with the corresponding country codes

We consider that use of a 2-letter label within a .BRAND registry will always avoid confusion with the corresponding country code. Indeed, the very basis of the .BRAND TLD model is for the brand to serve a unique source identifying function at the top-level, and for geographic names to serve a purely descriptive function at the second level. Thus, especially given the context of the underlying commercial site, consumers directed to `country.brand` will always be aware that they are engaging with a geographically-targeted version of a company's official web site as opposed to a government property. For example, it is highly unlikely that a user seeing `nz.brand` would assume any connection to the Government of New Zealand, or that the domain name is registered in the .nz ccTLD. Rather, the user would readily understand that the branded domain has content that is intended for the New Zealand market. Such an understanding also comports with existing expectations set by legacy brand websites (e.g. `uk.brand.com`), where consumers are not confused as to the function of the country code at the third level.

ICANN's explanation of the process for the release of 2-letter labels states that: ["comments will be reviewed and considered by ICANN in determining whether to authorise the release of letter/letter 2-character ASCII labels"](#). No explanation is given, however, as to how that decision will be reached and the factors which ICANN will take into account. Under the second option set out in Specification 5 and referred to above, there is no requirement for government consent. Indeed, governments do not have an ownership right over the 2-letter

labels which match the country codes: such a right would prohibit all use. Thus there is no automatic government prohibition on the release of 2-letter labels for .BRAND registries.

We are aware of the recent correspondence on this issue between the Registry Stakeholder Group (RySG) and Akram Atallah, including Akram's letter of 23 March 2015. For the record, we do not agree with the conclusion that Akram has reached, in relation to any TLD, that in any case where there is a government objection the 2-letter label must be reserved. The Board's resolution on this point requires Staff to implement improvements to the process to alert relevant governments when requests are initiated, and that "[comments from relevant governments will be fully considered](#)". It does not require that all objections from governments will be summarily accepted, regardless of legal merit or consideration of any security, stability, technical or competition concerns, of which the GAC has already advised, in its ICANN 51 Communiqué, there are none. In relation to .BRAND registries in particular, however, there can be no justification for adopting this approach, which is at odds with the Board's resolution and Specification 5 of the Registry Agreement.

Our proposal

For the reasons set out above, we have established that there is no likelihood of confusion between 2-letter labels in a .BRAND TLD and the corresponding country codes. Therefore, we propose that all Specification 13 applications for the release of 2-letter labels be presumptively approved. In other words, every such request will be granted unless there is a specific objection from a government which sets out a justification supported by national or international law and accompanied by clear evidence of the confusion with the corresponding country code. The burden would be on the government to overcome the presumption, and only in the case of a justified and well-supported objection by a government should the registry be required to enter into discussions with the objecting government to seek to resolve the issue. In all other cases the 2-letter labels would be released.

Release of country and territory names

Firstly, we propose that all applications for the release of country and territory names from Specification 13 registries should be flagged as originating from a .BRAND.

Secondly, we propose that all applications are treated under the single option within Specification 5 in that they: "[may be released to the extent that Registry Operator reaches agreement with the applicable government](#)".

During the ICANN52 Singapore meeting, the GAC discussed how it could facilitate the granting of this permission, and proposed that it should work with ICANN to develop a database setting out which governments are willing to consent to any such use, or specific categories of use, those which wish to decide on a case by case basis, and those which do not wish to consent. The database would also include contact information to assist a registry operator in seeking specific consent if required. To the extent that this database could be adequately maintained and kept up to date, we welcome this development.

We would be grateful for your early confirmation that this database project is underway and an anticipated timeframe for making this information available. Whilst we believe that all Specification 13 applications for the release of country and territory names should be granted by default unless there is a specific objection from a government, we are willing to participate in the creation of the proposed procedure.

Conclusion and next steps

We strongly believe that this community driven approach, which is supported by the BRG, BC and IPC, adequately takes into account the concerns raised by the GAC while facilitating the beneficial aims of .BRAND registries and the new gTLD program as a whole.

We look forward to hearing back from you on this proposal and express our willingness to assist with any practical issues in its implementation.

Yours sincerely,

Martin Sutton
President, Brand Registry Group

Elisa Cooper
Chair, Business Constituency

Gregory S. Shatan
President, Intellectual Property Constituency