Measures to avoid confusion with specific country codes at the second level

RySG WG

Donna Austin, Neustar

Reg Levy, M&M

Susan Payne, Valideus

Crystal Ondo, Donuts

Stephanie Duchesneau, Google

- Specification 5, Section 2 of the Registry Agreement contains two grounds for the release of two letter second level domains:

    - By agreement with the relevant government and country code manager; or

    - By proposing the release of two letter labels based on implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN.

- On 1 December 2014, ICANN introduced a process to enable the Authorisation of the Release of Letter/Letter Two-Character ASCII labels at the second level. This process included a 60 day comment period. Any letter/letter label that received a comment from a government was not authorized for release by the Registry Operator.

- On 6 October 2015, ICANN requested governments who had submitted comments to clarify those comments and explain how the use of the letter/letter label pertained to confusion with their corresponding country code.

- On 25 February 2016, ICANN sent notifications to each Registry Operator that submitted a request for authorization to release letter/letter labels, and whose request received a comment pertaining to confusion. ICANN asked each Registry Operator to describe measures it plans to implement to avoid confusion with the corresponding country codes.

- The measures are to be submitted to ICANN by 25 April 2016, 23:59 UTC.

Background

- During the face-to-face meeting at ICANN 55 Marrakech, the RySG agreed to the development of a number of templated 'measures to avoid confusion', with the intent that these be made available for use by all Registry Operators, including non-members of the RySG.

- There was some discussion of a small number of templates during the RySG meeting and via the mailing list after the meeting.

- These templates have been revised and are provided in the following deck for consideration and potential use by Registry Operators.

- Submitting a Proposed Measure to Avoid Confusion to ICANN is only the next phase in this current process.

- Both the government comments and the Proposed Measures to Avoid Confusion will be published on the ICANN website.

- ICANN will consider the comments and the proposed measures and draft criteria for "evaluating whether measures identified by a Registry Operators successfully mitigate confusion concerns raised by governments".

- The ICANN developed criteria will be posted for public comment before final adoption of measures to avoid confusion.

Background

- *The RySG is offering these Proposed Measures to Avoid Confusion for consideration with no guarantee of their acceptance by ICANN.*

- *The RySG will in no way be responsible for the manner in which any particular Registry Operator implements a Proposed Measure to Avoid Confusion.*

- *Before submitting a Proposed Measure to Avoid Confusion, each Registry Operator must determine for itself whether a particular measure appropriately meets the obligations under its Registry Agreement.*

- *These Proposed Measures to Avoid Confusions are not exhaustive and Registry Operators are in no way required to use any of these measures to respond to ICANN's request.*

Disclaimer

Proposed Measure to Avoid Confusion—Phased Allocation

Provide a brief explanation of TLD: [In order to provide context to the measures provide a brief explanation of the TLD]

Phased Allocation - Upon the release of the letter/letter combination corresponding to the objected to country code, Registry Operator will provide an exclusive thirty (30) day period in which registration of such letter/letter combination will be made only available to the applicable country code manager as listed at: http://www.iana.org/domains/root/db/

This type of phased allocation has been previously approved by ICANN as an acceptable and complete measure to avoid confusion with applicable country codes. For example, .TRAVEL included the following in its RSEP on 18 May 2009:

"In seeking to minimize any confusion with county codes, Tralliance will initially place all two-letter country code names, as listed in the ISO 31-66 list, in the RFP allocation round and will seek expressions of interest from all country code managers for their respective two-character names. Tralliance will allocate two letter country codes to any corresponding country code managers (as listed at: http://www.iana.org/domains/root/db/) that desire to register their name, with no restriction other that payment of normal registration fees and a commitment to use the registered name."

The Board approved the change via a resolution on 5 August 2010: https://www.icann.org/resources/board-material/resolutions-2010-08-05-en.

At that time, the amendment to the .TRAVEL Registry Agreement permitted release of 2 characters though a Phased Allocation Program https://www.icann.org/resources/unthemed-pages/travel-appendix-7-2010-08-23-en).

.TRAVEL has subsequently entered into a new gTLD Registry Agreement with ICANN and carried over the previous Board-approved release of two-characters through its phased allocation program. Current .TRAVEL Specification 5 language:

"All single-character and two-character labels that were previously reserved by the Registry Operator prior to the Effective Date of this Registry Agreement may be allocated through ICANN-accredited registrars according to a phased allocation program ("Phased Allocation Program"). The domain names included within the scope of the Phased Allocation Program shall be limited to a single and two-character labels. Registry Operator reserves the right to not allocate all single and two-character labels. Pursuant to the Phased Allocation Program, Registry Operator may elect to allocate labels by applying one or more of the following processes: 1) request for proposals and allocation based on evaluation criteria; 2) auction; or 3) first come, first serve registration."

Similar Phased Allocation Programs have been approved by ICANN as an implementation of measures to avoid confusion with corresponding country codes in .BIZ, .INFO, .ORG, and .JOBS.

Proposed Measure to Avoid Confusion—Exclusive Access

Proposed Measure to Avoid Confusion—Registry Operator Intends to be Registrant (may also work for brands)

Provide a brief explanation of TLD: [In order to provide context to the measures provide a brief explanation of the TLD]

Use of 'XX' at the second level

[INSERT NAME] as the Registry Operator for the .[TLD] TLD, the "Registry Operator", we have selected the label 'XX' to be reserved for registry operations as described in Section 3.2 of Specification 5 of our Registry Agreement. The domain name 'XX.TLD' will be used exclusively by us for the promotion of the TLD, and we will act as the Registrant of the domain name.

Protections

Registry Operator understands the concern that confusion may arise, and in order to avoid such confusion is willing to offer the following:

1. The domain name 'XX.TLD' will:
    a. be used exclusively by Registry Operator to support and assist the promotion of its registry operations;
    b. not be used to imply that it is, or represents, the government of the [INSERT]; and
    c. not be used to imply the government of [INSERT]'s approval of Registry Operator's operations or activities.
2. Registry Operator will commit to:
    a. investigate any reports of misuse, including misleading or deceptive conduct, including those from the government of [INSERT], and provide a written report in response; and
    b. where, in Registry Operator's sole opinion, misuse has occurred, cause the domain name's records to be removed from the DNS.

Furthermore, contained within our Acceptable Use Policy for the .[TLD] TLD is the following text:

"The Registrant of a domain name, as recorded in the Registry Service, will be responsible for:

a.   the use of their domain name;

b.   ensuring that the use of the domain name, where that domain name is a two letter Label that corresponds to a country code described in the ISO 3166-1 alpha-2 standard, avoids confusion with the corresponding country code;"

Should a Registrant fail to comply with the Acceptable Use Policy, the domain name may be cancelled, locked, placed on hold, transferred or deleted. Thus all Registrants in the TLDs, including ourselves, have an obligation to avoid confusion with two letter country codes and we have clear penalties for any failure to do so.

[Provided for illustrative purposes – each Registry Operator would need to tailor to be consistent with their own Acceptable Use Policy]

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    c. not be used to imply the government of [INSERT]'s approval of Registry Operator's operations or activities.
2. Registry Operator will commit to:
    a. investigate any reports of misuse, including misleading or deceptive conduct, including those from the government of [INSERT], and provide a written report in response; and
    b. where, in Registry Operator's sole opinion, misuse has occurred, registry operator will seek to work indirectly with the sponsoring registrar and/or directly with the registrant to address the misuse.
    c. In the event that misuse continues to occur, the Registry Operator may, in its sole discretion, undertake direct action up to and including suspension or deletion of the domain name.

Proposed Measure to Avoid Confusion—Registry Operator Intends to be Registrant

Proposed Measure to Avoid Confusion—Registry Operator with Open Registration

Provide a brief explanation of the TLD: [In order to provide context to the measures provide a brief explanation of the TLD]

Protections

Registry Operator understands the concern that confusion may arise, and in order to avoid such confusion is willing to offer the following:

1. Registry Operator will commit to:

    a. investigate any reports of misuse, including misleading or deceptive conduct, including those from the government of [INSERT], and provide a written report in response; and

    b. where, in Registry Operator's sole opinion, misuse has occurred, cause the domain name's records to be removed from the DNS.

Furthermore, contained within our Acceptable Use Policy for the .[TLD] TLD is the following text:

"The Registrant of a domain name, as recorded in the Registry Service, will be responsible for:

    a. the use of their domain name;

    b. ensuring that the use of the domain name, where that domain name is a two letter Label that corresponds to a country code described in the ISO 3166-1 alpha-2 standard, avoids confusion with the corresponding country code;"

Should a Registrant fail to comply with the Acceptable Use Policy, the domain name may be cancelled, locked, placed on hold, transferred or deleted. Thus all Registrants in the TLDs, including ourselves, have an obligation to avoid confusion with two letter country codes and we have clear penalties for any failure to do so.

[Provided for illustrative purposes – each Registry Operator would need to tailor to be consistent with their own Acceptable Use Policy]

Proposed Measure to Avoid Confusion—Registry Operator with Open Registration

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Provide a brief explanation of the TLD: [In order to provide context to the measures provide a brief explanation of the TLD]

Protections

Registry Operator understands the concern that confusion may arise, and in order to mitigate such concern is willing to offer the following:

1. Registry Operator will commit to:

    a. investigate any reports of misuse, including misleading or deceptive conduct, including those from the government of [INSERT], and provide a written report in response; and

    b. where, in Registry Operator's sole opinion, misuse has occurred, registry operator will seek to work indirectly with the sponsoring registrar and/or directly with the registrant to address the misuse.

    c. In the event that misuse continues to occur, the Registry Operator may, in its sole discretion, undertake direct action up to and including suspension or deletion of the domain name.

Proposed Measure to Avoid Confusion—Registry Operator with Open Registration

Proposed Measure to Avoid Confusion—Brand TLD (Specification 13)

Provide a brief explanation of the TLD: [In order to provide context to the measures provide a brief explanation of the TLD]

Protections

[REGISTRY OPERATOR] for the .[TLD] TLD has executed Specification 13 to the Registry Agreement. Specification 13 already contractually requires that the [Registry Operator] will apply measures which, by their very nature, avoid confusion with the corresponding country code, namely the following:

1. .[TLD] is identical to a qualifying registered trademark;

2. .[TLD] is not a Generic String, as this is defined in Specification 11;

3. .[TLD] TLD has developed and will implement a closed registration policy for .[TLD] that requires that all domain names in the .[TLD] TLD be registered ONLY by Registry Operator, its Affiliates, and its Trademark Licensees;

4. As required under the Registry Agreement, the .[TLD] TLD will clearly publish this registration policy;

5. .[TLD] TLD will conduct internal reviews at least once per calendar year to ensure continued compliance with Specification 13.

Compliance with Specification 13 prohibits the .[TLD] TLD from registering domain names to unaffiliated third parties and thus clearly designate to the public that .[TLD] TLD is a proprietary space in which all second-level domains in the TLD are being operated by [REGISTRY OPERATOR], its Affiliates and Trademark Licensees and not the [GOVERNMENT] or the corresponding country code operator.

By this [LETTER] [REGISTRY OPERATOR] confirms that all registrations of two letter domain names shall comply with the requirements of Specification 13.

Proposed Measure to Avoid Confusion—Brand TLDs

Proposed Measure to Avoid Confusion—Registry Operator Code of Conduct (ROCC) Exempt

Provide a brief explanation of the TLD: [In order to provide context to the measures provide a brief explanation of the TLD]

Protections

"[REGISTRY OPERATOR] for the .[TLD] TLD has applied for and been granted an exemption to the registry operator code of conduct under Specification 9 to the Registry Agreement. This code of conduct exemption already contractually requires that the [Registry Operator] will apply measures which, by their very nature, avoid confusion with the corresponding country code, namely the following:"

- Developing and implementing a closed registration policy for .[TLD] that requires that all domain names in the TLD be registered and used by Registry Operator and its affiliates;

- Clearly publishing this registration policy on Registry Operator's homepage for .[TLD]; and

- Enforcing of this registration policy and ensuring continued compliance, including through annual recertification of .[TLD]'s qualification for an exemption to the Registry Operator Code of Conduct.

This publicly available registration and usage policy would prevent [GOVERNMENTS] from registering domains in the .[TLD] TLD. It would clearly designate to the public that .[TLD] was a proprietary space in which all second-level domains in the TLD were being operated by [Registry Operator] and not [GOVERNMENT].

Proposed Measure to Avoid Confusion—ROCC Exempt

Proposed Measure to Avoid Confusion—Restricted or Community Registry Operator

Provide a brief explanation of the TLD: [In order to provide context to the measures provide a brief explanation of the TLD]

Protections

To address the confusion concerns cited by [GOVERNMENTS] regarding the use of the second-level domains [SLDS] in the .[TLD] TLD[s] Registry Operator will implement a restricted registration policy for .[TLD] that mitigates the potential confusion. To these ends, [Registry Operator] commits to the following:

- Developing and implementing a restricted registration policy for .[TLD] that [DESCRIBE REGISTRATION POLICY];

- Clearly publishing this registration policy on Registry Operator's homepage for .[TLD];

- [OPTIONAL] Including this registration policy in Registry Operator's Registry-Registrar Agreement with all appointed preferred registrars for the .[TLD] TLD; and

- Enforcing of this registration policy and ensuring continued compliance [DESCRIBE VERIFICATION OR ENFORCEMENT PROCESSES].

This registration and usage policy would prevent [GOVERNMENTS] from registering domains in the .[TLD] TLD. [DESCRIBE WHY GOVERNMENTS WOULD BE EXCLUDED] It would clearly designate to users that .[TLD] was a restricted space in which all second-level domains were registered by and for [DESCRIBE REGISTRANT POOL].

Proposed Measure to Avoid Confusion—Restricted or Community Registry Operator